

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

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OA No. 835/90

..

Date of decision: 29.10.92

Sh. M.B. Kunte

..

Applicant

Versus

Union of India

..

Through the Secretary,

Respondents

Cabinet Secretariat & Anr. ..

For the applicant

..

Sh. P.P. Khurana, Counsel.

For the respondents

..

Sh. P.H. Ramchandani, Counsel.

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Hon'ble Sh. P.K. Kartha, Vice Chairman (J)

Hon'ble Sh. B.N. Dhoundiyal, Member (A)

Whether ~~Reporters of~~ <sup>an</sup> to be reported? *yes*

J U D G E M E N T

(Of the Bench delivered by Hon'ble Sh. P.K.  
Kartha, Vice Chairman(J)

The grievance of the applicant relates to the decision of the respondents to recover a sum of Rs. 1,08,900/- from him ~~applicant~~ towards penal rent on account of his continued occupation of accommodation at No. 94- Lodhi Estate, New Delhi allotted to him.

2. We have gone through the records of the case carefully and have heard the learned counsel for both parties. On 8.5.90, when the application was admitted, an interim order was passed directing the respondents not to effect <sup>further</sup> recovery towards market rent/penal rent pursuant to the impugned order dated 18.1.89. The interim order

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has been continued thereafter until further orders.

3. The facts of the case are not disputed. The applicant has put in about 35 years <sup>of service</sup> in the Indian Navy and he was selected for encadrement in Grade 'A', Central Civil Service in the Cabinet Secretariat <sup>in</sup> 1985. The Ministry of Defence accorded its approval for the transfer of his services to the Cabinet Secretariat with effect from 1.10.83, i.e. the date of the initial constitution of the Central Civil Service. He was posted as Additional Secretary in the Cabinet Secretariat.

4. The applicant had been allotted Bangalow No. 94, Lodhi Estate, New Delhi in 1981. At that time he was posted as Officer on Special Duty in Naval Headquarters and Military Wing of Cabinet Secretariat. It was by virtue of that appointment that he was allotted the said accommodation out of Defence Pool.

5. Upon his induction into the Central Civil Service of the Cabinet Secretariat, with retrospective effect from 1.10.83, he assumed charge in the Cabinet Secretariat on 17.3.1986. Thereafter, he applied for a Civil Pool accommodation (Type VI) to which he was entitled. He also requested the Ministry of Defence to permit him to retain the accommodation at 94, Lodhi Estate, New Delhi pending release of equivalent Type VI accommodation by the Directorate of Estates to the Ministry of Defence. However,

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before this could be done, the applicant was posted to Shillong in April, 1986 as Commissioner, Special Bureau. According to the Office Memorandum issued by the Ministry of Works and Housing on 15.2.84, persons posted to Union Territories or North Eastern Region are entitled to retain General Pool Accommodation/ allotment of alternative general pool accommodation. The applicant was also entitled to the benefit conferred by the said O.M. as he was posted in the North Eastern Region. During the period of his posting, at Shillong, his family members including his wife, who was teaching at Jawaharlal Nehru University and 3 children who were studying in Delhi, continued to stay at 94-Lodhi Estate, New Delhi.

6. The respondents, however, took the view that the accommodation was allotted to the applicant through the Defence Pool while he was serving in the Naval Head-quarters and consequent upon his transfer to the Cabinet Secretariat, he was not entitled to retain the said accommodation. Since, he had not been allotted an accommodation from the Civil Pool before his posting to Shilling, there was no accommodation which he could retain under the said O.M.

7. The respondents did not allot any alternative accommodation to the applicant despite repeated requests made by him.

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According to him, he was thus, deprived of the benefit of the O.M. dated 15.2.84 issued by the Government.

8. The respondents took out eviction proceedings against the applicant. He therefore, filed Writ Petition No. 967/88 in the Delhi High Court which was disposed of by order dated 8.11.88. According to the said order, the petitioner agreed to withdraw the petition provided he was allowed time to vacate the premises in question upto 30.4.89. The High Court felt that it should be appropriate if the time prayed for was allowed provided he gave an undertaking to the Court that he would vacate the premises on or before 30.4.1989. The Court recorded his submission and accepted the undertaking given by him. On that basis, the Writ Petition was dismissed and time upto 30.4.89 to vacate the premises in question was allowed.

9. The undertaking given by the applicant before the Delhi High Court was as follows :-

"I give a solemn undertaking to the Court that I shall vacate and hand over possession of the premises in dispute, namely, 94-Lodhi Estate, New Delhi, to the respondents on or before 30th April, 1989. I would not seek any further extension on any other ground whatsoever. I shall pay the usual charges payable in this behalf. "

10. The applicant vacated the premises on 30.4.89 and handed over the possession to the concerned authority, as per the undertaking given by him.

*[Signature]*

11. The Ministry of Defence (Respondent No.2) issued a letter dated 27.12.88 calling upon the Assistant Director of Accounts that an amount of Rs. 1,08,900/- upto 31.12.88 was due against the applicant towards the market/penal rent for the accommodation in question since an amount of Rs. 27,180/- only had been deposited. Pursuant to this, the Office of the Assistant Director of Accounts have made deductions from the salary of the applicant and this recovery is under challenge before us.

12. The respondents have stated in their counter affidavit that he was in unauthorised occupation and that the recovery of market/penal rent from him is, therefore, justified. He could have retained <sup>ed</sup> defence pool accommodation only for a period of 2 months after he joined the Cabinet Secretariat. They have also stated that the Delhi High Court had dismissed the Writ Petition filed by the applicant.

13. The Union of India through the Secretary, Cabinet Secretariat (Respondent No.1) has not filed any counter affidavit. There is no explanation as to why the applicant was not given accommodation from the Civil Pool after the applicant was inducted into the Central Civil Service of the Cabinet Secretariat. He had applied for allotment of alternative accommodation from the Civil Pool before his posting to Shillong. In our opinion, the



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the applicant is entitled to avail of the benefits of the O.M. dated 15.2.1984 issued by the Ministry of Works & Housing.

14. One aspect of the matter is that at no time the respondents informed the applicant that in case he continued at the accommodation in question, he would be liable to pay damages/penal rent.

15. Another important aspect is that while giving the undertaking to the Delhi High Court, the applicant had stated that he shall pay the usual charges payable in this behalf and this undertaking was accepted by the Delhi High Court. By no stretch of imagination can it be stated that the usual charges will be other than normal licence fee payable in respect of the accommodation in question. A sum of Rs.36,130/- has already been recovered from the applicant as against Rs.27,180/- which is the normal licence fee in respect of the said accommodation for the period upto 31.12.1988. The applicant has already paid Rs.27,180. We are of the opinion that the purported recovery of any sum from the applicant over and above the normal licence fee for the period upto 30.4.1989 is neither fair nor just.

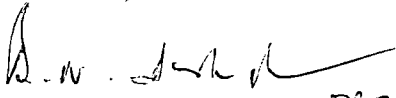
16. Accordingly, we allow the present application. We set aside and quash the proposal contained in the letter of the respondents dated 18.1.1989 to recover a sum of

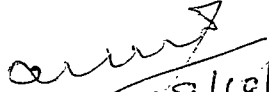
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Rs.72,770/- from the applicant over and above a sum of Rs.36,130/- already recovered from him. We order and direct that the applicant is liable to pay only the normal licence fee in respect of the accommodation in question for the entire period and that any amount recovered from him in excess of Rs.27,180/- should be refunded to him or adjusted against the normal licence fee payable upto 30.4.1989, as the case may be. The respondents shall comply with the above directions expeditiously and preferably within a period of three months from the date of receipt of this order.

There will be no order as to costs.

  
(B.N. Dhoundiyal) 29/10/92  
Administrative Member

  
29/10/92  
(P.K. Kartha)  
Vice-Chairman(Judl.)