

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

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OA.1249/91

Date of Decision: 4.9.92.

Dr. A. Golmei and Another

Applicant

Shri B. Krishnan

Counsel for the applicant.

Vs.

Union of India and Another

Respondents

Shri P.P. Khurana

Counsel for the respondents.

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The Hon'ble Mr. P.K. KARTHA, Vice Chairman(J)

The Hon'ble Mr. B.N. DHOUNDIYAL, Member(A).

1. Whether Reporters of local papers
may be allowed to see the Judgement? *Yes*

2. To be referred to the Reporters or not? *Yes*

JUDGEMENT

(of the Bench delivered by
Hon'ble Member Shri B.N. DHOUNDIYAL)

In this OA filed under Section 19 of the Administrative
Tribunal's Act, 1985, Dr. A. Golmei and Dr. (Mrs) Shakuntala
Golmei have assailed the failure of the respondents to
regularise the allotment of quarter No., D-11/15, Park-
Street in the name of the husband on retirement of his wife
from Government Service. They have challenged the demand
for damages made in OM, dated 27.8.87, 25.3.88 and 1.4.91
and have assailed the vires of OM dated 27.8.87 and 1.4.91.
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2. The case of the applicants is that they are in occupation of the aforementioned Government quarter allotted in the name of the applicant No.2, who retired from Government service on 30.11.86. The allotment was cancelled w.e.f. 1.4.87 vide letter dated 12.3.87. Applicant No.1 had applied for regularisation of this allotment in his name on 16.12.86. Later he applied through the Delhi Administration under whom he was working as Surgeon Incharge, Dr. N.C. Joshi Memorial Hospital. His application was recommended by Delhi Administration who offered to place one Type-V quarter at the disposal of the general pool. However, the respondents rejected his application on the ground that he was not posted in an eligible office. The Delhi Administration took up the matter once again but the respondents reiterated their stand vide letter dated 13.7.87 and directed the applicant to vacate the quarters immediately. They rejected the representation made by the applicant No.1 vide their letter dated 27.11.87, this time taking a new ground that the applicant No.1 owned a house in Janakpuri, New Delhi. On 23.9.88, he was offered a Type-V quarters in Bapu Dham Complex, San Martin Marg, which he could not accept due to his important
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assignment and due to academic career of his children.

Not only the applicants were given threats of dispossession, demand for damages @ Rs.1032/- per month was also raised.

From January 1989, the demand was assessed @ Rs.21/- per Sq.Meter of the living area, which was raised @ Rs.45/- per Sq.Meter from 1.4.91. The applicant contends that there is no provision in the Allotment Rules 1963 or in the FR 45 to enable the respondents to levy such damages and challenges the relevant OM dated 27.8.87 and 1.4.91.

The following reliefs have been prayed for, by him:-

"(A) That the allotment in respect of Government Residence bearing No.D-II/15, Park Street, New Delhi may please be directed to be regularised in the name of the applicant No.1 w.e.f. 1.4.87 i.e. the date of cancellation of the allotment of the same in the name of applicant No.2 on her retirement on payment of normal rate of licence fee.

(B) That the rental liability of the applicant may be directed to be reassessed in terms of pre-revised instructions by discarding the instructions contained in OM dated the 27.8.87 with OM dated 1.4.91.

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(C) The office Memo dated the 27.8.87 and

1.4.91 may also please be quashed.

(D) That the applicants may be made liable

to pay no damages in respect of the said premises

for the entire period of their occupation."

3. The respondents have stated that Dr. (Mrs) Golmei retired from service on 30.11.86 and allotment of this house was cancelled w.e.f. 1.4.87 after allowing her four months concessional period. Her request for retention of the house on medical grounds was not accepted, as her husband owned a house in Janakpuri. The request made by her husband, who is also a doctor in Government service, to allot the house in his name was not accepted, as the hospital, where he was posted was not in the general pool. It was in July 1989, that Dr. N.C. Joshi Memorial Hospital was declared an eligible office for this purpose. However, Dr. Golmei's date of priority was not covered for allotment of Type.V accommodation and he owned a flat at Janakpuri. Hence, his repeated requests could not be acceded to.

4. A case for eviction proceedings was filed in April, 1987

and eviction orders were passed. The applicants were evicted on 7.2.88, but they are stated to have broken the lock and re-occupied the house. The respondents have stated that

a report was lodged with the Mandir Marg Police Station on 10.1.89 though this is denied by the applicant.

Even house owning officers are eligible for accommodation in their turn and the option at Bapu Dham Type-V could be given to the applicant on this basis, though no actual allotment was made. However, he was ineligible for out of turn allotment as he owned a house in Janakpuri. Their continued occupation of the house was treated as totally unauthorised and amounted to criminal trespass.

5. On 29.5.91, an interim order was passed by this Tribunal restraining the respondents from evicting the applicants from the quarter in question. This has been extended till date.

6. We have gone through the records of the case and heard the learned counsel for the parties. In exercise of powers conferred/ ^{under} SR 317-B-25 of the Allotment of Government Residence (General Pool in Delhi) Rules, 1963, the Government conveyed their decision vide OM dated 1.5.81, that when a Government servant, who is an allottee of General Pool accommodation, retires from service, his/her son, unmarried daughter or wife or husband, as the case may be, may be

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allotted accommodation from the General Pool on adhoc basis, provided the said relation is a Government servant eligible for allotment of accomodation in General Pool and had been continuously residing with the retiring Government servant for atleast three years immediately proceeding the date of his/her retirement. The OM also provided for payment of licence fee at market rate for the period of unauthorised occupation. Para-4 of the OM, mentioned that this concession will not be available where the retiring officer or the member of his family owns a house at the place of his/her posting. In their letters dated 23.4.87 and 13.7.87, the respondents had rejected the request for allotment on the ground that Dr. Golmei was working in an eligible office. However, it is clear from the counter filed by them that exchange of pool accommodation with Delhi Administration was being done even in case of Dr.(Mrs) Golmei, who worked at different times in R.M.L. Hospital (eligible), Safdarjung Hospital (ineligible) and C.G.H.S. Medical centre, Parliament Annexe (eligible) and each time she was allowed to retain the house by releasing it from or taking it back into the general pool. In any case, since July, 1987, Dr. N.C.Joshi Memorial Hospital was declared as an eligible office for the Govt.

general pool accommodation. We do not find any reason or justification for rejecting the request of the applicant on this ground particularly when the Delhi Administration had offered to surrender a Type-V quarter in lieu thereof. It is clear from letter dated 3.4.87 from the Delhi Administration to Directorate of Estates (Annexure-III) that Dr. Golmei was eligible for Type-V accommodation since 1.6.76. It is only after Dr. N.C. Joshi Hospital was declared as an eligible office that the respondents came up with the plea of ownership of a house in Janakpuri making the applicant ineligible for regularisation of accommodation, vide their letter dated 27.11.87, (Annexure-II). A Single Bench of this Tribunal has held in OA 11/91 decided on 21.2.92, (Ms. Renu Kohli Vs. Union of India) that in such situations the applicants' case has to be considered on the basis that the retiree (in this case the applicant) had no house which was suitable for living. We respectfully reiterate the same view. The applicant is working as Head of Department of Orthopaedics at Dr. Ram Manohar Lohia Hospital and his ownership of a flat in a distant locality like Janakpuri should not debar him from the concession, he would otherwise be eligible for.

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7. In the facts and circumstances of the case, and in the interest of justice and fairplay, we hold that the applicant is entitled to the relief sought by him. Accordingly, we allow the application and direct that the allotment of Government Residence No.D-II/15, Park Street, New Delhi shall be regularised in the name of the applicant No.1, w.e.f. ^{for} ~~1.4.87~~ ^{Kamal} on payment of ~~fixed~~ rate of licence fee. In view of the above conclusion, reached by us, we do not consider it necessary to examine the vires of OM's dated 27.8.87 and 1.4.91.

8. The parties shall bear their own costs.

B.N. DHOUNDIYAL
(B.N. DHOUNDIYAL) 419192
MEMBER (A)

4/8/82
(P.K. KARTHA)
VICE CHAIRMAN (J)

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