IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
* * *

O.A. NO. 11/1991 DATE OF DECISION :

KUMARI RENU KOHLI ...APPLICANT

VS.

UNION OF INDIA & ANR. ...RESPONDENTS

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SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT ...SHRI B. KRISHNAN

FOR THE RESPONDENTS ...SHRI P.P. KHURANA

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?

JUDGEMENT

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J)

The applicant, Stenographer Grade 'D' in Directorate General, All India Radio filed this application under Section 19 of the Administrative Tribunals Act, 1985, aggrieved by the order of rejection of her request for allotment of an alternative accommodation by the order dt. 6.2.1990 (Annexure A2) passed by the Assistant Director of Estates stating that it was not possible to accede to the request for allotment of an alternative accommodation to the applicant.

2. In this application, the applicant claimed the relief that the respondents be directed to allot an

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alternative accommodation, Type-B in lieu of Quarter No.874-D, Laxmibai Nagar, New Delhi. Further it is also prayed that the applicant be not made liable to pay any sort of damages/panel rent/market rent in respect of the present premises bearing No.874, Laxmibai Nagar, New Delhi from the date of its cancellation in the name of her late father.

3. The facts of the case are that the applicant got employment as Stenographer Grade'D' in DG, AIR, New Delhi on 28.10.1987. As per rules, she is entitled to Type-II accommodation from the general pool. The applicant was residing with her father, Shri K.K. Kohli, who retired as Audit Officer on 31.1 .1989 and was in possession as an allotee of Type-B quarter bearing No.874-D, Laxmibai Nagar. The applicant applied for allotment of an alternative accommodation vide letter dt. 25.1.1990 (Annexure A1) on the ground that her father was an allotee and since retired on 31.12.1989. In the application dt.24.1.1990 annexed to the letter dt. 25.1.1990 (Annexure A1), she has given the reason that her father was in service and retired on 31.12.1989, though her father owned one room tenament- 47 B, Vijay Nagar, Delhi-9 and that household insufficient accommodation andis in dilapidated condition, which is not worth living. This house requires to be

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demolished and reconstructed. She prayed for ad hoc allotment on out of turn basis. She further stated that her father ultimately expired on 22.5.1990 and could not reconstruct the said old house. She again applied after the death of her father on 4.6.1990 and it was directed that the application will be considered after inspection of the site regarding the old house. She has also filed an affidavit in that regard stating therein that the father had since demolished the house for reconstruction before his death and further that she does not own or possess a residential plot within the limits of the local or adjoining municipalities near the place of posting. The widow of the retired e ployee, Sh.K.K.Kohli also filed an affidavit to that effect. Thus a number of grounds have been taken to press the allotment/regularisatio by the applicant stating that the request has been rejected by the respondents in a mechanical manner. It is further stated that the allotment has not been effected on the assumption that the father of the applicant had a house at Delhi. However, that house was in dilapidated condition and was got demolished by her father, but he could not reconstruct it in his lifetime. The case of the applicant is that her case is fully covered by the OM dt. 1.5.1981 barring the point of house owning. The applicant has been sharing the premises with her father since long and had not

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been drawing any HRA since her date of appointment w.e.f. 28.10.1987.

4. The respondents contested the application and stated that the applicant is eligible for allotment of general pool accommodation on her turn, but since the father of the applicant owned house bearing No.47-B Vijay Nagar, New Delhi, so according to rules, if the retired Government servant owned any house at Delhi or plot of land in Delhi, their wards are not to be considered for allotment of alternative accommodation/ regularisation of the quarter on retirement. It is further stated that the inspection of the site was ordered by competent authority on receipt of a request from the widow of the deceased regarding allowing her to retain the said quarter on payment of double the licence fee on medical grounds upto 31.8.1990. However, her request was to be considered on vacation of quarter No.874 Laxmibai Nagar. As regards damages, as per allotment rules, an officer is liable to pay damages @ Rs.20 per square meter of covered plinth area for the period of unauthorised occupation.

5. I have heard the learned counsel for the parties at length and have gone through the record of the case.

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It is not denied by the respondents that the retiring Government employee's ward, if any, can be allotted by way of regularisation the quarter, which was occupied by the retiree, if the ward is eligible for the same. In the present case, since the applicant was only a Stenographer Grade 'D', who was entitled to only Type-I quarter under rules. In view of this, the quarter No.874-B Laxmibai Nagar could not be regularised in favour of the applicant. The other plea taken by the respondents is that as per the OM No.12035(7)/79-POL II dt. 1.5.1981, the relevant instructions to be undergone as referred to in the said OM are as follows :-

> "In exercise of the powers conferred under S.R.317-B-25 of the Allotment of Government Residences (General Pool in Delhi) Rules, 1963, the Central Government have decided that when a Government servant, who is an allottee of General Pool accommodation, retires from service, his/her own son, unmarried daughter or wife or husband, as the case may be, may be allotted accommodation from the General Pool on ad-hoc basis, provided the said relation is a Government servant eligible for allotment of accommodation in General Pool and had been continuously residing with the retiring Government servant for at least three years immediately preceding the date of his/her retirement. In case, however, a person is appointed to Government within a period of three years preceding the date of retirement or had been transferred to the place of posting of the retiring Government servant any time within the preceding three years, the date on which he was so appointed or transferred would be the date of applicable for the purpose. This decision would cover cases of Government servants retiring on or after 7.11.1979."

However, para-4 of the said OM lays down as follows :-

> "The above concession will, however, be not available in cases where the retiring officers or the member of his family owns a house in the place of his/her posting."

The plea taken by the respondents is that the retiree,

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Shri K.K. Kohli owned one room tenament bearing No.47-B Vijay Nagar , New Delhi. It is also taken as stand in the counter that if the retired Government servant owns any house in Delhi or plot of land in Delhi, their wards are not to be considered for allotment of an alternative accommodation/regularisation of quarter on retirement. However, this stand of the respondents,is against the OM dt. 1.5.1981. The applicant, while applying to the respondents in the application, has clearly stated that the said house of her father-quarter No.47-B Vijay Nagar, New Delhi is in dilapidated condition and in a ruinous state and is not fit for residence and her father wanted to demolish and reconstruct it. This is evident from her application for allotment, given as early as in January, 1990 after the retirement of her father on 31.12.1989. The father of the applicant died in May, 1990 and on 4.6.1990, she again informed the respondents,after she was communicated the rejection order dt. 6.2.1990 (Annexure A2) that the said one room tenament had already been demolished by her father within his life time, but he could not construct it as he died prematurely. This is also mentioned in the proforma application which she submitted to the respondents. Thus the applicant's case has to be considered on the basis that the retiree had no house which was suitable for living and

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further that her father died after getting the said house demolished for reconstruction. The most literal interpretation of the said OM cannot be taken to the prejudice of the applicant. Only now what exists on the spot 47-B, Vijay Nagar is a plot of land. The applicant has also referred the matter to Hon'ble Minister of Information and Broadcasting and on this on 8.6.1990, the case was recommended for reconsideration by the respondents. On this it appears that there is a office note that the inspection be made on the site because the house by the time was demolished. The respondents in their counter also in para 4.8 admitted that the inspection of the site was ordered by the competent authority and it is further stated that 'Her request for the same will be considered on vacation of the quarter No.874, Laxmibai Nagar.' Thus the case of the applicant even after the rejection order dt. 5.2.1990 remains under consideration of the respondents. When the matter has come for reconsideration, therefore, the case of the applicant is fully covered by the OM dt. 1.5.1981 referred to above. The applicant's father, therefore, has no house of his own and now what remains is a plot of land. Para-4 of the OM, quoted above does not refer to any such condition that if the retiree has a plot of land, then the eligible ward should not be allowed regularisation or allotment on ad hoc basis of the eligible category of quarter.

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6. In view of this, it is clear that the case of the applicant should not be allowed to go by default.

7. The learned counsel for the applicant has referred to certain decisions, particularly that of B.Narayan Sharma & Ors. Vs. Union of India (OA No.831/90) decided on 15.5.1991. Though the facts of the case were different, but refusal of the respondents to regularise or allot the quarter in favour of the applicant of that OA was held to be arbitrary. In view of the above discussion, since the father of the applicant has died soon after retirement and there is a mention of the fact that the house, which he owned at Vijay Nagar is only one room tenament in ruinous state and also stood demolished within the life time of the father of the applicant, so the applicant becomes eligible for out of turn ad hoc allotment of eligible Type-II quarter.

8. The applicant has also claimed that the applicant should not be made liable to pay any sort of damages/panel rent/market rent in respect of the present premises No.874 Laxmibai Nagar, New Delhi from the date of its cancellation in the name of her father. In this matter, the question has not yet arisen. Further there are certain rules for recovery of damages because the retention of the quarter by the applicant

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after the aforesaid date is illegal. The rejection order dt. 6.2.1990 clearly rejected the claim of the applicant within the life time of her father, so the father of the applicant could have retained the house after retirement upto a maximum period allowed under the rules. The retention beyond this period is unauthorised. Thus any prayer on this by the applicant is not tenable at this stage. In view of the above, we direct the respondents that they shall consider the allotment of an eligible accommodation to the applicant on ad hoc out of turn basis to the applicant within a period of six weeks from the receipt of this order. We also direct whether the applicant or the LR of the deceased is liable to pay licence fee or damages for the premises 274-D, Laxmibai Nagar, is left to be decided by the respondents as per Extant Rules. In view of the above facts, the application is partly allowed and the stay granted on 4.1.1991 is vacated. In the circumstances, the parties to bear their own costs.

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(J.P. SHARMA)
MEMBER (J)