

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

(11)

O.A. NO.1989/91

DATE OF DECISION : 04.03.1992

SHRI A.K. VIDYADHARAN

...APPLICANT

VS.

UNION OF INDIA & ANR.

...RESPONDENTS

CORAM

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

FOR THE APPLICANT

...SHRI K.N.R.PILLAI

FOR THE RESPONDENTS

...SHRI M.L. VERMA

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

JUDGEMENT (ORAL)

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

The applicant, Assistant Manager (Technical) was posted in Government of India Press, Minto Road and transferred to Nilokheri Press in the same capacity by the order dt.25.4.90 and joined there on 2.5.90. While the applicant was posted at Minto Road, he was allotted a Quarter No.139, Thomsan Road, New Delhi. The grievance of the applicant is that the respondents have issued a Memo dt.20.6.90 (Annexure A4 to the application) to the applicant that he

should vacate the premises as the allotment in his case is deemed to have been cancelled w.e.f. 30.6.90 after allowing the concessional period of two months. He was also advised to hand over the vacant possession, otherwise the applicant is to be proceeded under Public Premises (Unauthorised Occupation) Act, 1971. (12)

2. The applicant has claimed the relief that the impugned order dt.20.6.90 (Annexure A4) be quashed and further to direct the respondents to charge only the standard licence fee for the quarter as long as he is allowed by the competent authority to reside at New Delhi, while working elsewhere and further a direction to the respondents to refund the over payment recovered from the applicant on account of licence fee.

3. I have heard the learned counsel for the parties at length. Regarding the relief (b) of para-8, it is only to the effect that the respondents be directed to charge only the licence fee till the applicant is allowed permission to reside at Delhi. The applicant has himself filed during the course of arguments, a Memo dt.14.10.91 where the permission was cancelled, which was granted to him on his own written prayer in the application dt.10.7.91. In view of this, relief (b) in the application becomes infructuous, as what the

99
1

applicant desired is not existing at this moment and that existed only for the period between 10.7.91 to 14.10.91. It is the main relief (a) wherein the applicant desires that the notice or memo dt.20.6.90 should be quashed on the ground that the applicant has not been heard and on the principles of natural justice, no order is to be passed without giving him an opportunity of hearing. The learned counsel for the applicant places reliance on the judgement delivered in OA 1131/86 (G.C.Saxena Vs. UOI) decided by the Single Bench of the Principal Bench on 11.9.87. The applicant highlighted para 6(iii) of the said judgement, a copy of which has been furnished during the course of the arguments and placed on record. However, this judgement is concerning certain provisions under PP Act, particularly Section 7 regarding ^{issue of} notices. Thus the reliance by the learned counsel on this judgement is misplaced.

4. The next argument by the learned counsel is that Annexure A4 has been issued to the applicant in a proforma, which is prescribed for a retiring person. It is a fact, but by this, the contents of a document cannot by itself be said to be illegal or unenforceable, if they clearly communicate the sense desired to the person concerned. In this case, the applicant has been transferred by the

↓

(X)

order dt.25.4.90 and he has taken over charge at Nilokheri, 80 miles away from Delhi in another Government Press on 2.5.90. So this notice only goes to show that after his transfer and taking over charge, only concessional period of two months is allowed to retain the allotted quarter No.139, Thomsan Road and that limit expires on 30.6.90. There is no dispute on the preposition that a Government servant, who is a lincencee only upto the time he is posted at the station **by** virtue of service conditions and has to vacate in the event of transfer from that station unless and until a permission is granted to retain the said premises after transfer. The similar is the situation of a retiree, though in that case, the period of concession may go upto four months. Thus on this contention of the learned counsel that the impugned order is in a meant for retiree, will not make this Memo unenforceable or invalid.

5. The learned counsel also contended that he has been discriminated upon and the persons, who had earlier been transferred, were allowed to retain the quarter at Delhi. On the point of discrimination, the learned counsel desires that the impugned order becomes arbitrary. The applicant has taken a specific plea in ground (c) of para-6, but the respondents have denied this fact in their reply. In the rejoinder to this para of the respondents, it is stated

le

15

that by virtue of their silence and not denying specifically, Harjinder Singh, Assistant Manager has been allowed to retain Press Pool quarter on payment of normal licence fee. Taking the argument of the learned counsel on his own words, the exemplar cited by the learned counsel does not show the point of time when Harjinder Singh lived in the allotted premises after his transfer or retirement whatever the case may be. However, the learned counsel pointed out that he has given certain dates also. Be that it may be, the question now arises is when there is a specific administrative instruction regarding the deemed cancellation of the licence of a Government servant on transfer, then in that event, a person has to satisfy under which provision he wants to overstay. The applicant was also not in the dark and he tried to obtain permission from the General Manager, Government Press, Nilokheri. Thus the action of the respondents in not allowing the applicant to retain the allotted accommodation after his transfer, cannot be said to be arbitrary.

6. The learned counsel for the applicant also referred certain family problems which are preventing the applicant from vacating the allotted quarter at Delhi, but these family problems are everywhere existing for a Government servant in case of a transfer and these cannot in any case

↓

16

override the administrative instructions so long as they are not void or arbitrary under Articles 14 and 16 of the Constitution. Thus the relief (a) claimed by the applicant cannot be allowed.

7. Regarding the relief (b), it has already been referred to in the earlier part of the judgement, but since the respondents have not yet served any notice demand and, as admitted by the learned counsel for the applicant, no deductions are being made from the salary of the applicant, so the question is left open. The respondents on their own are expected only to charge the premium for use and occupation whether a licence fee/damages/penalty according to the Extant Rules, but this observation in this judgement will not be prejudice to any of the parties to re-agitate the matter in proper time when the matter is in issue.

8. Regarding relief (c) of the application, it has not been shown either in the application itself or during the course of the arguments why the over payment has been made by the applicant to the respondents. On the other hand, the learned counsel for the respondents contended that the applicant has not paid even a single pie towards the premium or licence fee etc. since 1.4.91. So in view of this, this relief too being vague, cannot be allowed.

Je



9. In view of the above discussion, the application is dismissed with regard to reliefs (a) and (c) and the question with regard to relief (b) is kept open to be agitated by the respective parties at the time when the occasion arises and this judgement will not be a hurdle in the way of the applicant or the respondents to take the respective stand. In the above circumstances, the parties are left to bear their own costs.

AKS

J. P. Sharma
(J.P. SHARMA) 4-3-92
MEMBER (J)