

DATE OF DECISION : 03.04.92

O.A. NO. 1965/91Shri Ajay Sansanwal
Vs.

...Applicant

Union of India & Ors.

...Respondents

O.A. NO. 2016/91Shri T.D. Verma
Vs.

...Applicant

Union of India & Ors.

...Respondents

O.A. NO. 2028/91Shri C.P. Sharma
Vs.

...Applicant

Union of India & Ors.

...Respondents

CORAM

Hon'ble Shri J.P. Sharma, Member (J)

For the Applicants

...Shri S.S. Tiwari

For the Respondents

...Mrs. Raj Kumari Chopra

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))

All the above three Original Applications are taken together as the applicants in these cases are working as S.A. Grade-I in the Office of Garrison Engineer and at the relevant time of filing this application with Garrison Engineer, South, Air Force, Palam. Since the common point involved for adjudication is the same all the three cases are decided by a common judgement.

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2. In OA No.1965/91 in the case of Ajay Sansanwal, the applicant was allotted Quarter No.91/4, Pinto Park and the applicant was posted with Garrison Engineer, Subioto Park. The applicant was transferred by the order dt.1.2.1989.

It was also the movement order and posted him to G.E. (Central)

within Delhi. However, on transfer the applicant did not

vacate the allotted premises, so the respondents in view

of the instructions regarding retention of accommodation

in big cities, Army Instruction A.16, in not

stating the permission of retention from the competent authority

issued the notice in July, 1990 and August, 1990 and he

was assessed to penal rent and was assessed to penal damages w.e.f. 1.2.1989. In this

application, the applicant has assailed the orders of

realisation of penal rent with a direction to the

respondents to refund the damages realised, along with

interest.

3. The facts relevant to the present application No.1965/91 are

that the applicant was locally transferred to G.E.(Central)

on 1.2.1989 and that he applied for a new allotment of married

accommodation to his office, i.e., G.E.(Central). He was given

a non availability certificate on 21.5.1990 (Annexure AIV).

After that he was issued a notice on 14.7.1990 (Annexure AV)

against which the applicant represented. In the month of

November, 1990, a sum of Rs.1910 was deducted from the applicant's

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pay leaving only an amount of Rs.77. Again in December, 1990, he made a representation, but to no effect and was also issued a show cause notice under P.P. Act, 1971, but these proceedings are said to have been completed and the judgement has not been communicated to the applicant. It is further stated that the Chief Engineer allowed the applicant to retain the quarter vide Annexure AXI, which is reproduced below :-

"UNAUTHORISED OCCUPANTS OF GOVT. ACCOMMODATION AT PINTO PARK

1. Reference our letter No.3711/AC/814/E5 dt.14 Jul 90.
2. The Chief Engineer Delhi zone informed personally on telephone the undersigned on 05 Apr 91 that the Station Commander has agreed for retention of quarter No.91/4 Pinto Park by MCS-314289 Sh.Ajay Sansawal, Supdt.B/R Grade-II till 31 Aug, 91.
3. You are, therefore, requested to stop recovery of damage rent from the individual. You are also requested to refund the damage rent recovered so far.

In spite of these facts, the respondents have not stopped deductions from his salary. However, the applicant has since been transferred to Ganga Nagar and vacated the premises on 31.8.1991.

4. The respondents contested the application and stated that as per instruction 26 of the Army Headquarters, the applicant had to obtain the permission of retention of the premises after transfer from Subroto Park to Garrison Engineer.

It is also said that the applicant's wife is also an employee serving in a nationalised bank (PNB) and that she is continuing

14 to draw HRA though she was sharing accommodation with

her husband. It is said that this fact has been concealed by the applicant. The applicant was given notices in July

and August, 1990, but to no effect, and then the

proceedings under P.P. Act were drawn.

5. In the case of Shri T.D. Verma, the facts are almost

analogous to that of the above applicant except that the

applicant was transferred to tenure station in January, 1987,

but returned from there on 27.2.1989. On return he joined

Chief Engineer, Delhi Zone, Delhi Cantt. He is still in

occupation of the premises. The applicant was served with

a notice of eviction of the quarter on 9.2.1987 (Annexure A).

He represented against the same in February, 1987 and the

applicant was allowed to retain the quarter for the tenure

period, i.e., upto 27.2.1989. In June, 1991, respondent

No.3 served a bill amounting to Rs.23,301 covering the period

from February, 1989 till date. The applicant made a

representation, but that has not been replied. The applicant

also annexed at p-13 of the rejoinder a copy of CCE order

dt.14.7.1990 where one Shri N.K. Sharma, Tracer was ordered

to be charged penal rent, but subsequently by the

order dated 28.11.1990, Shri Nitigam Kumar Sharma was

ordered to be refunded covering the period from April, 1989 to

August, 1990. This order dt.23.11.1990 is at p-14 of the

rejoinder. Thus the applicant has challenged the billing of amount as a measure of damages of the premises in occupation.

6. The respondents also contested this application almost taking the same plea as in that case. It is stated that the applicant is an unauthorised occupant and so according to well known rules, the damages were levied against the applicant leaving the period the applicant was on tenure posting. The respondents have also filed a copy of the letter dt.13.7.1991 (Annexure R2 to the counter) addressed to G.E. (South) informing the applicant through him that he should approach the allotting authority, i.e., Air to HQ.3 Wing Palan for the needful. The respondents stated that the applicant is not entitled to any relief and the damages levied against him are according to the law.

7. In OA No.2028/91 in the case of Shri C.P. Sharma, the facts are also analogous to that of the above applicants except that he remained on tenure posting till 7.4.1989 and he returned to Delhi thereafter and was posted in ENC Branch, Garrison Engineer. However, by a subsequent representation, he got himself posted under Garrison Engineer, Subroto Park. So he has come under the range of

the allotment of the same type of quarter which he is occupying. When the applicant joined at Delhi, the applicant was served with a bill charging the market rate of rent to the tune of Rs.20,000, and recovery has also been effected from his salary. The applicant made a representation, but to no effect, hence this application.

It is stated that the applicant is not unauthorised occupant. In spite of this fact, the respondents have issued bills upto June, 1991.

8. The respondents contested the application and filed

the counter stating that the applicant did not vacate the quarter after his transfer to tenure station, but subsequently he was allowed permission, but on return to Delhi joining ENC branch, Kashmir House, the applicant did not vacate these premises nor obtained any permission for sanction of the same. During the course of the arguments, the learned counsel has filed a Memo showing that Shri C.P. Sharma had joined at G.Subroto Park on 28.2.1992, though wrongly mentioned in this Memo as 1991.

9. The learned counsel for the respondents also referred to para 6.2.3 and Table 'D' at p-249 showing the duty of Station Commander and Chief Engineer. This is from the Book of

Defence Services Regulations for the NES, 1968 Edition

and printed in 1982 incorporating the Government orders

upto 1990.

10. I have heard the learned counsel for both the parties at length. The applicants in these cases are Superintendent B/R Grade I, Superintendent B/R Grade II and Surveyor Assistant Grade I working in engineering service and are civil defence employees. By virtue of their postings, they have been allotted quarters earmarked for the particular discipline of the engineer branch. At the relevant time, all the applicants were posted under Garrison Engineer.

11. Now taking the case of Shri Ajay Sansanwal, he has since been transferred to Ganga Nagar and has already vacated the quarter. It is also said by the departmental representative that the quarter which was allotted to him and continued to be occupied by him till his transfer to Ganga Nagar, Rajasthan was not a quarter meant for "Key" persons. The only opposition to his prayer is the application for recovery of penal rent is that the applicant did not obtain requisite permission in accordance with the Army Instruction No.26 of 1970. Para-4 of the same is

"Permission to retain accommodation will be granted in writing initially for a period of three months on the production of a 'non-availability certificate' from the Station Commander of the duty station. Extension of the period of retention of accommodation beyond the initial period of three months will be granted only on the production by the individual of a 'no accommodation' certificate as in the form in Appendix 'A' to this Instruction from the Station Commander of the duty station. Such extensions will be granted for a period not exceeding three months at a time. Where permission to retain accommodation is not granted, the individual will be allowed ten days time to vacate the accommodation. Retention of accommodation beyond that period will be treated as unauthorised.

So far as Ordnance Factories are concerned, extension of the period of retention of accommodation beyond the initial period of three months will be granted only in cases where quarters can conveniently be spared by the General Managers concerned. Other conditions as laid down herein should also be complied with.

However, from the record it appears that on 5.4.1991, the Chief Engineer, Delhi Zone informed personally on telephone

to Senior Barrack Stores Officer for Commander Works

that he is Engineer (C.E) that Station Commander has agreed for retention of the quarter No. 91/4 Pinto Park by MES Ajay Sansanwal,

Superintendent B/R Grade II till 31.3.1991. I think,

this clinches the whole objection of the respondents and

the various pleas they have taken regarding the imposition of penal rent for use and occupation beyond the period when the applicant was not posted at Subroto Park under the same Garrison Engineer.

12. Not only this, there is also a request made by the

applicant as stated in para 4.5 of the application through Garrison Engineer (Central), (Annexure III to the application) and

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the respondents in the counter did not comment on this adversely. Further in the case of Shri C.P. Sharma, along with the rejoinder the applicant has filed a letter issued by the Ministry of Defence dt.6.1.1986 which was addressed to all Controller of Defence Accounts on the subject of 'Eviction of Defence Civilian Employees from Defence Pool Accommodation.' It laysdown that the accommodation allotted to a civilian employee in big cities should not normally be allowed to be vacated unless they are provided with alternative accommodation appropriate to their status.

13. It is not disputed that the applicant is defence civilian employee. Though it has come in evidence that (Mrs. Ajay Sansanwal) the applicant's wife was drawing HRA and she would have procured another accommodation out of the funds provided to her by the employer of his wife, but since there is a definite order dt.6.4.1991 (Annexure A1) to the effect of sanctioning permission upto 31.8.1991, the applicant cannot be said to have been in unauthorised occupation of the said quarter. It is for the respondents to take whatever disciplinary action they can take according to law or Extant Rules. But regarding the quarter when once extension is given for retention till 31.8.1991, then charging of penal rent at market rate would negative the

sanction already accorded. The respondents were given an opportunity to counter this fact and they could have very well filed the affidavit of the Lieutenant Colonel S.B.S.O., who signed for C.W.E. Not doing this means that the sanction accorded very well lies within the scope of the relevant extant instructions or the practice prevalent regarding the use and allotment of accommodation to the civil defence employees. In view of this, any damage levied for the period beyond February, 1989 till 31st August, 1991 shall not be accorded to the law and in such an event, the applicant shall be entitled for the refund of the amount that has been recovered from the salary of the applicant.

14. Regarding the case of Shri C.P. Sharma, he has since returned to Delhi after tenure posting on 24.7.1989 and since 23.2.1992, he is posted in Subroto Park under the same Garrison Engineer. In this case, the applicant was allowed during the posting under Garrison Engineer, Subroto Park, Air Force during 1983 to retain the accommodation as the same fell under the jurisdiction of the allotting authority. He was also allowed permission when he was on tenure posting, by the Garrison Engineer, Air Force, Palam. Now the question remains of the period

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when the applicant has joined again at Delhi. Though it has not been stated in the counter that the quarter is meant for those persons, who are actually normally required at odd hours also onkey postings, but at the same time when once he has been allowed to retain the quarter and after return from tenure posting if he has occupied the same quarter meant for civilian, though may be reserved for key posts, the respondents have to provide alternative accommodation to the applicant till he is made to vacate the said premises. I have not gone through any rule where a defence civilian working in the same discipline, though may be of different branch of Army, Air Force or Navy may be asked to vacate the premises unless he is allotted alternative accommodation. This shall be in line with the Memo issued by the Ministry of Defence on 6.6.1986 which has been filed as Annexure R1 to the rejoinder in this case and deals with the eviction of defence civilian employees from defence pool accommodation.

15. Transfer is an incidence of service and if a person from one place of posting to the other place of posting within the same metropolitan city is transferred,

then unless he is provided with alternative accommodation, it shall be harsh and unjust to levy market rent as well as to evict him from the said premises without providing him with an alternative accommodation of his status. Though it is said to be Government married key personnel officers quarters, yet the respondents have to see that if a permission has been allowed at one time, as has been done in 1983 as well as when the applicant was on tenure posting, then why the permission should not be assumed to be granted when the applicant has joined on transfer to Delhi.

16. The applicants are low paid employees and are an important part of military service where they are providing essential amenities to all the three wings-Army, Air Force and Navy. Though MES is a different wing under ENC, yet their services cannot be undermined and if they are serving and providing road lights, fittings, furnichures etc. in the maintenance for the convenience of the forces, then they are to be provided with an accommodation and at least they cannot be evicted from an accommodation, which they are already occupying unless and until an alternative accommodation is provided.

17. The case of Shri T.D. Verma, serving on the rank of Surveyor Assistant Grade I is same and the reasonings given in the case of Shri C.P. Sharma also apply in his case except that now he is posted under G.E. (South) under C.M.E., Palam.

18. I have given a careful consideration to the impugned orders in the case of Shri C.P. Sharma as well as of Shri T.D. Verma and I find that the damages once imposed on one Shri N.K. Sharma for unauthorised occupation have also been waived subsequently as is evident from

the documents filed along with annexures to rejoinder in the case of Shri I.D. Verma, when there is an authority to waive damages, then the case of the applicants also deserves to be considered on the same line.

19. In view of the above facts, the above Original Applications are disposed of as follows :-

O.A. NO.1965/91

The respondents are directed to refund all the damages, if any, recovered as rent for the premises 95-1/4 Pinto Park from the applicant for the period from 7.2.1989 to 31.8.1991.

O.A. NO.2016/91

The respondents are directed to quash the impugned bills raised in the month of May and June, 1991 and refund the amount, if any paid in excess of usual licence fee for the premises No.75/5 Pinto Park and shall charge the same licence fee for the period from February, 1989 onwards except otherwise as per Extant Rules.

The respondents are further directed to continue to charge the same licence fee till an alternative accommodation of equal type is provided to the applicant from the defence pool accommodation or MES pool to which he is entitled as per seniority.

The respondents are directed to refund the excess amount, if any, realised from the applicant regarding the premises 75/6 Pinto Park beyond the licence fee for the period from July, 1989 onwards

The respondents are further directed to continue to charge the same licence fee till the applicant is provided an alternative accommodation of his status from the defence pool etc. according to his seniority.

In the circumstances, the parties shall bear their own costs. A copy of the judgement be placed on each file.

(J.P. SHARMA) 3.4.92
MEMBER (J)