

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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O.A. NO. 241/91

DATE OF DECISION : 27.02.1992

SHRI PANNA LAL GUPTA

...APPLICANT

VS.

UNION OF INDIA & ORS.

...RESPONDENTS

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

FOR THE APPLICANT

...APPLICANT IN PERSON

FOR THE RESPONDENTS

...SHRI P.P. KHURANA

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

JUDGEMENT

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

The applicant, Assistant Director, Intelligence Bureau was transferred to Guwahati (Northern Eastern Region) charge and handed over at New Delhi on 4.4.1988. At the time of transfer, the applicant was in possession of an allotted residence No.1336, Sector-XII, R.K. Puram, New Delhi. The applicant on 22.4.88 from Guwahati in accordance with the Government Of India's OM dt.15.2.1984 (Annexure A2) applied for allotment of an alternative accommodation by the application dt. 22.4.1988 (Annexure A1). The applicant was transferred back to Delhi vide Order dt.10.1.1989 (Annexure A9) and he joined on transfer to Delhi on 4.5.1989.

The applicant applied for regularisation of the aforesaid quarter as the allotment in the name of the applicant was cancelled vide their letter dt. 1.6.1988 and 13.6.1988 w.e.f. 4.6.1988 (Annexures A3 and A4). Not only this, the Directorate of Estate issued eviction order on 14.12.1988 (Annexure A8). When the applicant resumed his duties at Delhi, he applied for regularisation of the said quarter, but Directorate of Estate replied by the letter dt. 9.2.1990 (Annexure A3) that the applicant should first vacate the quarter in possession and then apply for Government accommodation. However, when the applicant persisted and made another application dt. 23.2.1990 on which by the letter dt. 3.8.1990 (Annexure A14), the applicant was informed that the premises can be regularised if the applicant deposits damages amounting to Rs.17,685. The applicant harassed by the eviction orders paid the amount of damages under duress on 20.8.1990 and the premises were regularised by Directorate of Estates on 24.8.1990 (Annexure A18).

2. The grievance of the applicant is that the amount of Rs.17,685 be ordered to be refunded to the applicant with 15% interest thereon. The applicant also prayed that Director-II of Estates be asked to tender apology causing the applicant unjustified harassment and public

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humiliation.

3. The application has not been admitted with regard to this latter relief and only it has been admitted with regard to the refund of the amount of damages of Rs.17,685 with 15% interest thereon. Thus the challenge of the applicant is to the letter dt.13.6.1988 (Annexure A4) and 3.8.1990 (Annexure A16). The respondents contested the application on the ground that by the Directorate of Estate's OM dt.19.4.1985 No.12035(24)/77 POL-II (Annexure R1 to the counter), those officers who retain general pool accommodation even after their transfer to North Eastern region shall be considered in every case on merit. The relevant portion of the same is reproduced below :-

"Office Memorandum

Subject : Retention of general pool accommodation/
allotment of alternative general pool
accommodation to civilian Central
Government employees posted to States and
Union Territories of North Eastern
Region (Assam, Meghalaya, Manipur, Nagaland,
Tripura, Arunachal Pradesh and Mizoram) and
Andaman & Nicobar Islands and Lakshwedweep.

Orders regarding retention of general pool
accommodation/allotment of alternative general pool
accommodation with regard to the above mentioned
category of officers were conveyed in O.M. of even
numbers dt.15th February, 1984, 2nd June, 1984 and
30th March, 1985. The matter relating to extending
the concession of retention of accommodation/allotment
of alternative accommodation in the case of house
owning officers has been examined in consultation with
Finance Division and it has been decided that
individual cases should be considered on merits
and decision taken."

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It is further stated that regularisation or allotment of residence on reposting has been done in accordance with the order dt. 1.8.1988, but it relates to unauthorised occupation. It is further stated that the applicant has tendered the amount by his own letter of August 21, 1990 (Annexure R3 to the counter).

4. I heard the applicant in person. None appeared from the side of the respondents.

5. It is evident from perusal of the OM No.12035 (24/77) POL-II dt. 15.2.1984 (Annexure A2) issued by the Government of India which is on the subject of retention of the general pool accommodation/allotment of an alternative general pool accommodation to Civilian Central Government employees posted to States and Union Territories of North Eastern Region. The relevant portion is extracted below :-

"The Ministry of Finance (Department of Expenditure) have in their Office Memorandum No.20014/3/83-E.IV dt.14.12.83 issued orders regarding various allowances and facilities admissible to Civilian Central Government employees serving in the States of Assam, Meghalaya, Manipur, Nagaland and Tripura and the Union Territories of Arunachal Pradesh, Mizoram and Andaman and Nicobar Islands. The question of granting permission for retention of general pool accommodation/allotment of alternative general pool accommodation to such officers who are posted to their aforesaid States/Union Territories and who desire to keep their family at the last station of posting has been considered

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and the President is pleased to decide as follows :-

- (a) In the case of officer, who may be in occupation of accommodation upto Type E in the 'General Pool' at the last station of his posting, alternative accommodation of one type below to the type of accommodation he was occupying in the same or nearby locality or Hostel accommodation, as may be available may be offered to him if he requests for retention of accommodation for the bonafide use of the members of the family. However, if such an officer was in occupation of Type B accommodation, he may be permitted to retain the same accommodation. For an officer, who may be in occupation of Type E-1 and above, alternative accommodation in Type E may be provided.
- (b) The accommodation offered for retention as indicated in (a) above will be subject to recovery of licence fee at the rate of $1\frac{1}{2}$ times the standard licence fee as defined under F.R.45A for the accommodation offered or 15% of the emoluments drawn by him as defined under FR 45-C on the date of his transfer, whichever is less, for the period beyond the permissible period for retention of the residence under SR 317-B-11(2).
- (c) It is obligatory for the officer desiring retention of government accommodation at the station of his last posting to accept the alternative accommodation offered to him, failing which the above concession will be withdrawn and the Provision of the Allotment of Government Residences (General Pool in Delhi) Rules 1963 will apply, with regard to the government accommodation in his occupation immediately before his posting to any of the aforementioned States/Union Territories.
- (d) The request for retention of accommodation/allotment of alternative accommodation should reach the Directorate of Estates within the month of his relinquishment of charge at the last station of his posting.
- (e) It is the responsibility of the officer concerned to intimate to the Directorate of Estates, the date of relinquishment of charge immediately prior to his posting in the North Eastern Region, the date of joining the new post in the North Eastern Region and the date of handing over charge in that Region. The concerned office will also ensure that such intimation is sent to the Directorate of Estates within one month of the event.
- (f) The facility of retaining allotment of government accommodation in the previous station will also be available, if the government servant is transferred from one State/Union Territory to another within the North-Eastern Regions."

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This OM of Government of India is issued under the directions of the President and there is no mention in this OM regarding the fact whether such an incumbent who has been transferred to North Eastern region owns a house of his own at the station from which he is transferred will not be allotted or regularised the accommodation of the same type or lower type. The OM of Directorate of Estates dt. 19.4.1985 also does not debar the alternative allotment of accommodation, but only mentions that the case of such an incumbent shall be decided on the merit of each case. "It has been decided that individual cases should be considered on merits and decision taken." Now it is to be seen whether the the Directorate of Estates has considered the case of the applicant on merit or not, The applicant has applied to the respondents by the application dt. 22.4.1988 (Annexure A1) in compliance with the OM of Govt. of India of February, 1984. The respondents, however, by the letter dt. 13.6.1988 cancelled the allotment by observing in the aforesaid letter (Annexure A4) that since Shri P.L. Gupta has been relieved of his duties on 4.4.1988, the allotment of the above quarter No.1336/S-KII, R.K.Puram, New Delhi is already deemed to have been cancelled w.e.f. 4.6.1988 after allowing the concessional period of two months admissible under rules. This goes to show that the case of the applicant has not been considered on merit at all. Not only this, the applicant has made

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repeated representations and requests on 17.6.1988
(Annexure A5) which was replied by the letter
dt.5.8.1988 (Annexure A6) in which also there is no
mention that the case of the applicant has been
considered on merit, but it is only mentioned that
the applicant owns a house No.H-312, Narayana Vihar,
New Delhi. Not only this, the Deputy Director,
Intelligence Bureau, also sent a DO to the Joint Secretary
dt. 27.9.1988 (Annexure A7) to consider sympathetically
the case of the applicant for regularisation of
the retained quarter in his name. The applicant again
made a representation to the respondents in
September, 1988 that the DDA flat has been rented out
and is on lease and it is not possible for him to get
it vacated and that he has disclosed this fact also
while he was earlier allotted the Government accommodation.
Thus that reason of owning a house in Delhi should not
come in the way according to the applicant. The
applicant has also stated that this house is not according
to his status also. The respondents did not take
any action on the same, but Directorate of Estates passed
eviction order on 14.12.1988 (Annexure A8). The
applicant again in January, 1989 requested the respondents
and also the Asstt. Director of Intelligence Bureau by

the letter dt. 16.5.1990 (Annexure A1C) recommended that the damages ordered to be realised from the applicant be waved. Thus the action of the respondents is not in keeping with the Office Memorandum issued with the sanction of the President in February, 1984 and any amount released as damages from the applicant shall be against the aforesaid OM of February, 1984.

6. Even though the Office Order issued by the Directorate of Estates on 19.4.1985 cannot supercode the Government of India's order of February, 1984 issued with the sanction of the President, yet if at all the Office Order of 19.4.1985 (Annexure R1) has some force in that event also, the case of the applicant should be considered on merit as is envisaged in the said order of 19.4.1985. The respondents have not at all applied their mind to the case of the applicant and mechanically dealt with the representations made by the applicant from time to time as well as the recommendations made by the Deputy Director as well as Assistant Director of Intelligence Bureau in their DOs addressed to the Joint Secretary, Ministry of Urban Development.

7. The incentive has been given by the Government of India to officers, who go in Northern Eastern Region and

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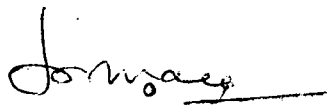
cannot take their family with them and as a matter of concession this special facility is allowed to such officers so that their family may be retained at the earlier place of posting and they may peacefully discharge their duties unmindful of the problems of the residence of their wards and dependents ^{at} earstwhile place of posting. In view of the above facts, the amount of damages recovered from the applicant is totally unjustified, illegal and contrary to the OM of February, 1984 issued with the sanction of the President.

8. In view of the above facts, the application is allowed and the respondents are directed to charge only the licence fee at the rate given in para(b) of the CM dt. 15.2.1984 (Annexure A2) quoted above for the period for which the damages have been recovered. The respondents are further directed to refund the excess amount to the applicant realised from him in the form of damages for the aforesaid period, i.e., 1.7.1988 till the date the applicant has joined the duties at Delhi on May 4, 1989. However, in the circumstances, the applicant is not entitled to any interest on the amount to be

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refunded. The respondents shall comply with this order preferably within a period of two months from the receipt of this order. In the circumstances, the parties to bear their own costs.

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(J.P. SHARMA) 27.2.91
MEMBER (J)

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