

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
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O.A. NO.2810/1991

DATE OF DECISION : 14.2.92

SHRI PATRIC GEORGE

...APPLICANT

VS.

DELHI ADMINISTRATION & ANR.

...RESPONDENTS

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

FOR THE APPLICANT

...SHRI SANJAY KUMAR

FOR THE RESPONDENTS

...SHRI T.S. KAPOOR

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

JUDGEMENT

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

The applicant in this case, employed as a Plumber under Delhi Administration in PWD assailed the order dt. 23.10.1991 (Annexure A8) in this application under Section 19 of the Administrative Tribunals Act, 1985 issued by Executive Engineer, PWD, Circle 15 wherein the applicant has been asked that he should vacate the quarter within 15 days as the allotment in hisname has been cancelled. If he fails to vacate the

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quarter within the period, then he himself will be liable for the consequences. The applicant has claimed the relief that the notice issued to him on 7.3.1985, 14.8.1991, 5.9.1991 and 23.10.1991 be quashed and the respondents be restrained from taking any steps in pursuance of the impugned orders. A further direction be issued to the respondents to recover the market rate of rent from the applicant and in the alternative, the respondents be directed to allot an alternative accommodation to the applicant and the applicant be not evicted without due process of law. The applicant has also filed an affidavit enclosing an application that he has applied for allotment of an alternative accommodation to Executive Engineer, PWD (II), Lok Nayak Jai Prakash Narayan Hospital, Delhi.

2. The facts of the case are that the applicant was appointed as Plumber, CPWD under Delhi Administration and in 1973, he was allotted a quarter in PWD, Circle No.15 (Annexure A2) for his residence. In 1982, the applicant in the same capacity was transferred to PWD, Circle No.2 under Delhi Administration and posted at Lok Nayak Jai Prakash Narayan Hospital, Delhi. In 1985, the applicant was given a notice (Annexure A3) against which the applicant represented (Annexure A4) and after the representation, the matter appears to have been cooled down.

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Again a notice dt. 14.8.1991, which was received by the applicant on 5.9.1991 and another notice on 15.9.91 (Annexures A5 and A6) were served on the applicant to vacate the said quarter because the quarter is needed for the residential purposes of the staff posted in PW Circle No.15. The applicant made a representation on 10.9.1991 (Annexure A7), but the applicant was issued the impugned notice dt. 23.10.1991 (Annexure A8) and against that the applicant represented on 14.11.1991. Since the applicant apprehended his eviction, so he has filed this application against the impugned order dt. 23.11.1991, since no reply was given to his representation dt. 14.11.1991.

3. The respondents contested the application and stated in the reply that since the applicant has been transferred from PWD Circle No.15 to PWD Circle No.2 and the quarter was given to him only when he was attached to that circle, so he was asked to vacate the quarter in January, 1985 as the said quarter is meant for essential staff of the division. However, since there was no claimant, the applicant was allowed to live in the said quarter. However, subsequently when the essential staff of division, PWD Circle 15 pressed for allotment of the quarter and further since the applicant has let out the

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said quarter to one Shri Ram Nivas of Begu Sarai, Bihar and one Shri Shaukin of Delhi state and there were complaints received from the Electrical staff in the Electrical Enquiry Office that the applicant has been carrying out illegal activities like drinking and bringing bad character girls in his house creating nuisance, so he was requested to vacate the house. The respondents have filed a copy of the complaint (Annexure R1). An enquiry was done and a letter was issued on 18.7.1991 to the Engineer-in-Charge of the Enquiry Office, Power House, wherein it was reported that the complaint is correct. The residents of these quarters of Circle 15 had also signed in token of their assertions (Annexure R3) in support of the above report. The applicant has no right to continue to live in the said quarter which is meant for essential staff of PWD Division, Circle 15. So a notice was given to him. The applicant has no claim to retain the quarter and in terms of conditions of service, he has to apply for an alternative accommodation at the place of his new posting, i.e., in PWD Circle in Lok Nayak Jai Prakash Narayan Hospital. The application therefore, according to the respondents is without merit.

4. I have heard the learned counsel for the parties at length and have gone through the record of the case. It is not disputed that the applicant is a Plumber and was

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appointed by Delhi Administration and posted in Circle 15, PWD, Delhi. Transfer is an incidence of service and the applicant had to obey the transfer order to PWD Circle No.2 in 1982 and joined Lok Nayak Nai Prakash Hospital in the same capacity as Plumber. The applicant has filed the extract of Delhi Administration Allotment of Government Residence (General Pool) Rules, 1977 Amendments, dt. 1.11.1978. The said Rule 19(4) is quoted below :-

" 19(4) (a) When an employee of a department under Delhi Administration, who have its separate pool of accommodation, is transferred, proceeds on deputation on a higher post in another department under Delhi Administration, and is in occupation of Govt. residential accommodation, will be eligible to retain the present accommodation on payment of licence fee at normal rate under FR-45-A, till an alternative accommodation, according to the rules, is allotted to him from the Department where he has been posted. This will also be applicable in the cases of officers/officials of Police Deptt.

(b) In the cases of officers/officials, who are in occupation of earmarked houses for a particular post on transfer/deputation/appointment to a higher post under Delhi Administration, may be considered for allotment of accommodation according to rules on priority basis, so that the earmarked houses could be vacated. The officers/officials will be eligible to retain the said accommodation on payment of licence fee at normal rate under FR-45-A till that period."

5. In view of the above amended rule, it is clear that the applicant has a lien to retain the allotted quarter in PWD Circle 15 till the time he is provided with an alternative accommodation in PWD Circle 2. It is also just and equitable that a person who has got a quarter in 1973 and is working under Delhi Administration, though in another division of CPWD should not be thrown on roads by virtue of a transfer made on administrative grounds.

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The applicant has a transfer liability in all the circles of PWD and so the respondents are bound to provide him with a quarter if they choose to transfer him from one circle to another till the time such allotment is made, the applicant has a right to retain the earlier allotted quarter.

6. It has come from record that the applicant has not made any effort to get a quarter allotted in his name in PWD Circle 2, but that itself will not end an eviction of the applicant from the allotted quarter because when the applicant had proceeded on leave in January, 1985, on the representation of the applicant, the matter was shelved. Neither he was given any reply nor the matter in pursuance of the notice was further agitated by the respondents. It means that the respondents have given him a right to retain the said quarter of essential staff in PWD Circle 15. Again after six years, the matter has been revived by issuing a fresh notice in August, 1991. There must be some basic reason to issue such a notice and that notice cannot be issued only on the ground that the applicant ceased to be in active service as essential staff of PWD Circle 15. However, the impugned notice goes to show that the applicant has sublet the accommodation to other persons, i.e., another aspect of the matter and for that

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the respondents are free to proceed against him under the relevant provisions of law, but merely that the applicant has been transferred from one PWD Circle to another PWD Circle cannot be taken to be a ground to evict the applicant and charge market rate of rent from him. The applicant has also now applied for allotment of a quarter in PWD Circle 2. The respondents are bound to consider the case of the applicant for getting him allotted an alternative accommodation in the PWD Circle 2 as he continues to be an essential staff as a Plumber in Lok Nayak Jai Prakash Narayan Hospital, Delhi.

7. The excuse taken by the respondents is that the applicant has been transferred from PWD Circle 15 to PWD Circle 2, but that excuse is not taken up under law. However, regarding certain allegations made against the applicant of not living a good moral life or allowing the house to be used by other persons is a separate ground and the respondents are free to proceed against him on that ground departmentally.

8. The application is, therefore, disposed of in the manner that the impugned order dt. 23.10.1991 is quashed and set aside and the respondents are directed to recover only the licence fee prescribed under rules and further consider the case of allotment of an alternative accommodation to the applicant in PWD Circle 2 and the respondents shall make ^{efforts +} in that regard by taking the case with the

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Executive Engineer, PWD Circle 2 and the moment, the applicant is allotted an alternative accommodation, he shall vacate the premises of PWD Circle 15 and in default, he shall be liable to pay damages according to the Extant Rules. The respondents, however, shall be free to proceed departmentally against the applicant if the quarter in PWD Circle 15 is misused by the applicant for purposes other than ^{his own} residence. In the circumstances, the parties to bear their own costs.

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J. P. Sharma
(J.P. SHARMA) 14.2.92
MEMBER (J)