

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
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OA 2973/91

10.04.1992

SHRI CHANDER PAL

...APPLICANT

VS.

UNION OF INDIA & ORS.

...RESPONDENTS

CORAM :

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

FOR THE APPLICANT

...SH.O.N. MOOLRI

FOR THE RESPONDENTS

...SH.R.L. DHAWAN

1. Whether Reporters of local papers may
be allowed to see the Judgement?

2/2/92

2. To be referred to the Reporter or not?

JUDGEMENT (ORAL)

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

The applicant working as SHS Carpenter Grade-II was allotted quarter No.6/B-1 Punjabi Bagh Colony and remained in possession of the same till today even though he was transferred to CDO Meerut on promotion in the next grade on 20.9.1990. The grievance of the applicant is that he has been transferred back to Delhi by the order dt. 31.10.1991 and also joined at Delhi, but the respondents have cancelled the allotment of the said quarter by the order dt.14.10.1991 after issuing an earlier notice dt.17.9.1991 wherein a show cause notice was issued as to why the allotment of the said quarter be not cancelled as the applicant has since been transferred to Meerut.

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In this application, the applicant has claimed the relief that the respondents be directed to regularise the said quarter No.6/B-1 Punjabi Bagh in his name and to charge the normal rent for the period of transfer to Meerut till the date of his retransfer and to cancel and quash the order declaring the applicant as an unauthorised occupant w.e.f. 30.9.1990/1.10.1990 and also cancel the orders dt.17.9.1991 and 14.10.1991 (Annexures A4 and A5 respectively).

The case of the applicant is that after transfer to Meerut, the applicant made a representation in November, 1990 that he should be shifted back to Delhi on account of the family and other inconveniences, he is likely to suffer by the said transfer. In view of that representation, finally the orders have been passed on 31.10.1991 shifting the applicant back to Delhi. The learned counsel for the applicant has also referred to the fact that on joining at Delhi, the applicant cannot be thrown out and the said quarter has to be regularised in the name of the applicant because he has come back on transfer almost in a year though technically, the period is more by a few days. It has also been stated that the order cannot be passed declaring an unauthorised possession from a retrospective date and such an order cannot have ~~il~~legal sanctity.

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The learned counsel for the respondents referred to the counter filed in reply to the application wherein the various averments made in the application have been denied or explained. The learned counsel for the respondents also during the course of the hearing filed the circular of the Board No.E(G) 85 Qtr-1/9 dt.15.1.1990 and referred to this annexure dealing with permanent transfer in para 1.1. It is also stated by the learned counsel for the respondents that the procedure for regularisation or allotment to a person, who is retransferred to the same place is given in Chapter 3(1)(D) quoted at p-16 of the counter wherein same advantage is allowed to the person giving seniority to his position regarding consideration for allotment on out of turn basis.

I have heard the learned counsel of both the parties at length. The learned counsel for the applicant has also shown a notice issued under Public Premises Act in November, 1991 and desired that he may be allowed to further amend the application. But since the matter has been heard and there is a stay granted in his favour, it was left open that he cannot get both advantages of adjournment as well as continuance of stay. In view of this, the matter has been heard finally on merit.

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The relief No.1 claimed by the applicant is of regularisation. The only argument advanced in this connection by the learned counsel is with reference to annexure filed along with the rejoinder where extract of the rules of the Housing Committee have been filed and at p-54 of the said extract in para(b), the attention is drawn to the last sentence that where the proceedings of eviction have been initiated, no order for levying damages can be passed under the Rules. The issue is not what has been argued. The issue is whether a person who has gone on transfer and joined at a new place of posting and does not obtain a permission to retain the said quarter during his posting at the transferred place, then in the event of retransfer of such a person back to the original place whether the same quarter can be regularised or not? The instructions in that regard are clear. It is not a temporary transfer nor it has been alleged or averred in the application by the applicant. The transfer in September, 1990 for all the purposes ^{was} on permanent transfer to the knowledge of the applicant and he has joined in Meerut on promotion. Two months' after joining, the applicant has requested that

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he should be transferred back to Delhi on the grounds mentioned in the representation. The representation has been annexed as Annexure A2. In this representation also, there is not a single word wherein the applicant might have requested for retention of the quarter at the original place of posting. In these circumstances, the contention of the learned counsel that he was a temporarily transferred cannot be accepted. Further, the applicant was given a notice on 17.9.91 and the copy of the same has been filed as Annexure A4 to the application. Even no representation against this notice or reply appears to have been filed nor averred in the application. Rather what is stated in para 4.4 is acceptance of this notice of the applicant. The acquiescence on the part of the applicant in not replying to the notice and continuing with the posting at Meerut, to my mind, goes to show that the applicant during this period of his posting at Meerut never represented to the respondents for retention of the quarter which otherwise could have been allowed to him on certain grounds. The same prayer has also not been made in the present application that the respondents should have allowed the

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applicant to retain the quarter on the grounds which were beyond the control of the applicant to take his family along with him to Meerut. In view of this, nothing can be said that the applicant could, as a matter of convenience on the ground of magnanimity and mercy, be given the benefit of regularisation. The learned counsel has referred to the case of Ms. Sushma Goswami decided by the Hon'ble Supreme Court regarding *Compassionate appointment* ~~discretion~~ *and that*, The applicant himself was not vigilant enough ~~to~~ *for* ~~to~~ *for* help, then nobody can come to his help. Relief No.1 which is vehemently opposed by the respondents cannot be allowed against the circular of the Railway Board quoted above as well as the instructions referred to at p-4 (running page-16) of the counter.

Since relief No.1 could not be allowed, so the notice dt.17.9.91 and 14.10.91 also (Annexures A4 and A5 respectively) cannot be quashed.

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Regarding the charging of normal rate of rent from the applicant, the learned counsel for the applicant has pointed out that any order to the detriment of a person cannot be given a retrospective operation and the order dt.14.10.1991, therefore, can apply prospectively. However, in the meantime the respondents have also initiated proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and a notice has already been issued in November, 1991 to the applicant. Thus the respondents cannot now realise any damage or recovery, if any, even if the normal licence fee has to be undergone by way of proceedings before the prescribed authority under the aforesaid act and this -

it shall be governed by the outcome of the decision of the prescribed Authority under the P.P. (E.O.U) Act-1971.

The rejoinder was not on the file. The same has been summoned from the office and has been ordered to be placed on the file. The circular filed by the learned counsel for the respondents on 15.1.1990 is also placed on the file.

However, the learned counsel for the applicant has argued that now the applicant has made a representation,

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though may be belated one, atoning for his past acts of slumber and inaction, so the representation for regularisation of the quarter be considered by the respondents since he has been posted back in one year, though a few days more, at the original place of posting, i.e., to Delhi. In view of the above, the application is decided in the manner that the quarter cannot be regularised in favour of the applicant, but regarding the realisation of damages for use and occupation during the period when the applicant was posted at Meerut and subsequent to that, shall be governed by the final result and outcome of the proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. However, the respondents are at liberty to decide the representation of the applicant, which he has preferred or may prefer in due course regarding his regularisation/allotment according to the Extant Rules. In the circumstances, the parties shall bear their own costs.

J. P. Sharma
(J.P. SHARMA) 10.4.92
MEMBER (J)
10.04.1992