

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(1)

OA 2994/91

27.04.1992

SHRI K.C. RAJBANSHT & ANR.

...APPLICANT

VS.

UNION OF INDIA & ORS.

...RESPONDENTS

CORAM :

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

FOR THE APPLICANT

...SHRI D.P. AVINASH

FOR THE RESPONDENTS

...SHRI TEK CHAND,
U.P.C.

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

JUDGEMENT (ORAL)

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

The applicant No.1 is the father and applicant No.2 is the son. Applicant No.1 retired as Senior Auditor on 31.12.1990 from the office of Controller of Defence and Accounts. Applicant No.2 is the Research Assistant serving in the Office of the Cabinet Secretariat since 17.12.1985. Applicant No.1, during his service, was allotted a general pool accommodation bearing No. GI 849 Sarojini Nagar, New Delhi. Applicant No.2, son was sharing that accommodation even after he got employment under Central Government in Cabinet Secretariat and has not been drawing HRA since his posting.

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After the retirement of the father on 31.12.1990, the applicant No.2, the son applied through proper channel to the Directorate of Estates for regularisation/allotment of the accommodation alongwith the filled up proforma as per OM dt.8.5.1981 at p-17 of the paper book (Annexure C). The grievance of the applicants is that respondent, No.3 has not regularised/allotted eligible type of accommodation in favour of the applicant No.2 in terms of the aforesaid OM of May, 1981. He has prayed for the regularisation/allotment according to the entitlement of applicant No.2 and to charge the normal licence fee in respect of the accommodation of GI 849 Sarojini Nagar. It is further prayed that order dt.6.11.1991 which is a notice under Section 4 (1) and (2) (b) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and order dt. 7.3.1991 from the Directorate of Estates to applicant No.1 not to settle his retirement benefits without obtaining 'No Demand Certificate' from Assistant Director of Estates. This application was filed on 15.12.1991 and the notice was issued to the respondents for 30.12.1991. None appeared on this date. So date

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was adjourned to 13.1.1992 and none appeared on that date also and further adjournment was granted till 5.3.1992. None appeared on that date also for the respondents. Another adjournment was granted till 26.3.1992. On 26.3.1992, Hon'ble Shri S.P.Mukerji, Vice-Chairman sitting in the Single Bench passed the order that if the counter is not filed on 27.4.1992, it will be presumed that they did not wish to oppose the application and the orders will be passed accordingly. Today the departmental representative, Shri Tek Chand, ^{for further time} _A HDC is present and prays to file the counter. There is no written request for the vacation of the order passed by the Bench on 26.3.1992. The oral request of the departmental representative cannot be entertained. They have not yet engaged any counsel to represent them in this case. The learned counsel, Shri D.P.Avinashi has been heard *ex parte* in this case.

The case is very simple and that is if the son or a ward of a retiring Government servant happens to be also in the Central Government service and is not claiming any HRA since the inception of his service and

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It was the allotted accommodation of his father whether he should be given out of turn allotment or regularisation of the same allotted quarter with the father. In the present case, father Shri K.C.Rajbanshi was allotted a Type III quarter No.GI 849 Sarojini Nagar, New Delhi and he was Accounts Officer. However, his son, Shri C.K. Rajbanshi is entitled to that type of quarter being Research Assistant serving in the Office of Cabinet Secretariat, South Block, New Delhi. The departmental representative was asked in reply that the son is also entitled to a quarter from the general pool, i.e., from the same pool the father has been allotted during his service career.

The application for out of turn allotment/regularisation was given by the son on 7.1.1991 along with a proforma (Annexure A). The relevant OM issued by the Ministry of Finance (Annexure C) dt.8.5.1981 in para 7 clearly lays down that one type below can be allotted on out of turn basis. The applicant has also referred to the concession of

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allotment of quarters to dependents on retirement. As per extract from Swamy's Manual on Establishment and Administration marked as Item 17 of that book and in Chapter 67, the last para reads, "The allotment will be one type below the allottee is entitled, but not higher than the type occupied by the retired employee except in exceptional circumstances."

The respondents in the reply dt.17.5.1991 too admit this allotment of Type B accommodation to Shri C.K.Rajbanshi, but they have attached a condition that the arrears of licence fee pertaining to the present quarter will be recovered from the gratuity of the retired employee or from the son of the retired employee.

Taking all these facts into consideration, the respondents should have offered an eligible type of premises to the son, Shri C.K.Rajbanshi within a specified time and during that period on the terms and conditions as are mandatory, applicant No.2 should have

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shifted with bag and baggage also with the retiree and with his family to the assigned expected accommodation proposed to be allotted to him. The respondents, therefore, have defaulted in not giving any eligible type of accommodation to the applicant NO.2. Not giving such an accommodation will be in violation of the said OM of May, 1981 (Annexure D to the application) and any order passed against the applicants to vacate the occupied allotted premises GI 849 Sarojini Nagar will be against the principles of natural justice as well as in violation of the said OM of May, 1981.

The respondents have issued a notice under Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 to the father of the the applicant and it also appears that they have informed the Accounts Officer not to make payment of DCRG without 'No Due Certificate'. These are the matters beyond the scope of this application. If any amount of DCRG is not paid or withheld, applicant No.1 is right to agitate the same in the proper forum. There is no prayer to that effect also. Since the applicant ^{no 2} is entitled to out of turn allotment of a Type II

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quarter and he can be given anywhere, i.e., place where a vacancy arises provided there is any assurance given by respondent NO.3 at particular place. But that shall not be binding as there is nothing on record that there is a contest of this application by a counter.

In view of the above facts, the application is disposed of ex parte in the following manner :

(i) The respondents are directed to allot eligible category of quarter from the general pool to applicant NO.2, Shri C.K.Rajbanshi within a period of three months from the date of receipt of a copy of this order on the terms and conditions of his service on the prescribed licence fee etc. as the case may be and the applicant No.2 shall be liable to pay, ~~in the case he is not entitled to Type L~~ ~~accommodation~~, the licence fee from the date he takes over the possession of the said premises.

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(ii) The applicant Nos.1 and 2 shall not be evicted from the premises CT 849 Sarojini Nagar till applicant No.2 is made available a vacant premises of his entitlement anywhere at any place from general pool and the respondents shall be free to proceed under PP (EOU) Act, 1971 for the realisation of damages etc. according to the rules from applicant No.1 separately and only deducting the licence fee from the DCRG, if any amount is lying with the respondents subject to a liberty to them to recover damages as per authority of Union of India Vs. Shiv Charan, 1991(1) ATC 129.

(iii) The notices dt.6.11.1991 and 7.9.1991 shall be subject to the final allotment of premises in favour of applicant No.2.

In the circumstances, the parties are left to bear their own costs. Copy be given dasti.

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After the judgement has been dictated, Shri
J.C.Madan, proxy counsel for Shri P.P.Khurana, counsel
for the respondents appeared for the respondents.

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Signature.

(J.P. SHARMA)

27.4.92

MEMBER (J)

27.04.1992

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