

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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OA 3019/91

22.07.1992

SHRI VIJAY SINGH

...APPLICANT

VS.

UNION OF INDIA & ORS.

...RESPONDENTS

CORAM :

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

FOR THE APPLICANT

...SH. V.S.R. KRISHNA

FOR THE RESPONDENTS

...SH. P.P. KHURANA

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

2. To be referred to the Reporter or not? *JS*

JUDGEMENT (ORAL)

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

The applicant, a Radio Technician, Directorate of Coordination (Police Wireless), Ministry of Home Affairs has assailed the order dt. 4.12.1991 (Annexure A5) where he has been asked that since he has unauthorisedly occupied Quarter No.F-2, Transmission Station, Humayun Tomb w.e.f. 1.12.1991, the damages shall be recovered from him at the rate of Rs.40 per square metres; as the total living area of the quarter is 57 square mettes and thereby an amount of Rs.2280 p.m. is to be realised from his pay.

The applicant has claimed the relief that the quarter No.F-2 of Transmission Station, Humayun Tomb be regularised in his name by a direction to the respondents; the memorandum

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dated 4.12.1991 levying damages at the rate of Rs.2280 p.m. from the salary of the applicant be quashed and a direction to them to charge only the normal licence fee from the applicant. This application was filed on 7.12.1991. By the order dt. 7.1.1992, there was an interim direction to the respondents ~~restricting~~ restraining & ~~restricting~~ them from putting into effect the order dt. 4.12.1991 and that order continued from time to time by the Bench.

restraining

The case of the applicant is that he joined the Directorate of Coordination on 30.8.1989 as a Radio Technician and is working at the Transmission Station, Humayun Tomb. The work assigned to the applicant is of arduous nature requiring day and night's shift duties. There are four F type quarters which are exclusively allotted to the Radio Technicians. There are different timings of shifts starting from 8 A.M. in the morning with a duration of six hours each. The applicant has a place of residence at Ghazipur, which is of course, in U.P. bordering Delhi. The applicant applied for allotment of such a residence by the representation dt. 25.10.1991. One quarter of F category fell vacant on 30.11.1991 and the applicant was orally informed by Shri A.K.Tiwari, Extra Assistant Director that he may occupy the quarter vacated by Shri Ranbir Prasad. By the letter dt. 3.12.1991 issued by the Administrative Officer of Directorate of Coordination (Police Wireless), the applicant was informed to explain within

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24 hours about the unauthorised occupation of the said quarter. The applicant submitted an explanation on 4.12.1991. On the same date, the applicant was communicated the impugned order dt. 4.12.1991 that he is an unauthorised occupant. The applicant represented against the same on 9.12.1991 (Annexure A6). On the whole, the case of the applicant is that since he has been verbally permitted by Shri Tiwari, EAD, so he is entitled to the regularisation of the said quarter on the payment of the normal licence fee and the damages as envisaged in the impugned letter dt. 4.12.1991 cannot be recovered from him.

The respondents contested the application and denied the various averments made in the application. It is stated that there are four F type quarters. One is reserved for STAs/TA(M) and the rest three quarters are allotted to Radio Technicians working at Transmission Stations as per station seniority. That the three F quarters reserved for Radio Technicians have already been allotted to Radio Technicians as per station seniority. One type F quarter falls vacant which is to be allotted to Technical Assistant (Mtce) as per aforesaid policy which has been unauthorisedly occupied by the applicant. It is denied that Shri Tiwari ever permitted the applicant to occupy the said type of quarter. Since the quarter was never allotted to the applicant, he is in the unauthorised occupation of the same. These averments made in the counter have not been rebutted by any rejoinder by the applicant.

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I have heard the learned counsel for both the parties at length and perused the annexures attached to the pleadings. The relief No.(a) claimed by the applicant is of regularisation of the said quarter. In the whole of the application, there is no rule under which the applicant could be regularised such a type of quarter. However, the learned counsel stated that the applicant belongs to reserved category and these four F type quarters are meant for Radio Technicians, who have to perform arduous duties in various shifts and since one of the quarters has fallen vacant on the basis of his seniority at the station, the applicant with permission of one Shri Tiwari, EAD occupied the same. However, the said permission as alleged by the applicant in the application has been totally denied in the reply by the respondents. Shri Tiwari has not been made a party, who may state on his account about the conduct, which has been alleged by the applicant regarding grant of permission. Thus it is not established that the applicant was given any permission to occupy the said quarter. In the absence of any such written direction, which the applicant by virtue of his service status, should have obtained the same before entering into the said premises, the credibility of the applicant is reduced when the respondents have taken the stand that no such permission was granted by Shri Tiwari, EAD. The grievance assailed in this application is not that the applicant by virtue of seniority has been ignored for allotment of the said premises. In fact, the applicant has come on the assumption

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that his entry into the said premises is in an authorised manner, but that is not so. In view of this fact, the premises in favour of the applicant cannot be regularised nor the Tribunal has any such jurisdiction to give any such permission to a person who has not been considered by virtue of his seniority, but himself entered into the premises and subsequently wants a seal of the Court on his such entry not supported by any document or any circular or instructions issued by the department.

The relief No.(c) claimed by the applicant is regarding the charging of the normal licence fee, but since the applicant has entered into the premises without any valid allotment order, so this relief also cannot be granted despite the instructions which the department has in force for regulating allotment and realisation of licence fee/damages from such licencees of the Government accommodation, who are allotted as per those instructions.

The main argument of the learned counsel has been on the relief (b) for which he has with full force argued that the damages cannot be levied arbitrarily and when there is a specific enactment, i.e., Public Premises (Eviction of Unauthorised Occupants) Act, 1971, the respondents should have proceeded under that Act. In fact the impugned order dt. 4.12. 1991 lays down that since the applicant is an

unauthorised occupant, the damages at the rate of Rs.40 per square metres shall be charged and according to this calculation, the amount comes to Rs.2280 p.m. though it is not mentioned in this letter ~~who~~ this Rs.40 per square meter has been fixed. In the counter filed by the respondents also there is no mention of any such rule which may authorise the respondents to fix the damages at such a rate.

The learned counsel for the applicant has also referred to the fact that the applicant has not been given any notice regarding the levy of damages at such a rate and in the show cause notice issued on 3.12.1991, he was given 24 hours to file the reply, the Administrative Officer in a hurry passed the order on 14.12.1991 levying these damages. Taking all these facts, there seems to be some substance in the contention of the learned counsel for the applicant only on the ground of fixation of these damages.

The learned counsel has argued also certain collateral aspects of the seniority and the right of the applicant to get an allotment and also on the aspect of the reservation category to which the applicant belongs. These are the facts which need not be touched in this application considering the reliefs prayed for by the applicant.

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In view of the above discussion and after giving a considered opinion and thought to the averments made in the reply by the respondents, the reliefs (a) and (c) of the application are disallowed and rejected. Regarding relief (b), the same is allowed and a direction is issued to the respondents to issue a show cause notice to the applicant detailing the rule under which such damages can be recovered and after giving a reasonable time to the applicant, decide the same according to the law. The stay order granted is vacated. In the circumstances, the parties shall bear their own costs.

J. P. Sharma

(J. P. SHARMA)

MEMBER(J)

22.07.1992