

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 452/2004

New Delhi, this the 24th day of December, 2004

Hon'ble Sh. Sarweshwar Jha, Member (A)

Parminder Singh
Qtr. No.29-X
Chitra Gupta Road
Paharganj, New Delhi.

...Applicant

(By Advocate Sh. M.K.Bhardwaj)

V E R S U S

Union of India through

1. The Secretary
Ministry of Information and Broadcasting
Shastri Bhawan, New Delhi.
2. The Director General
Doordarshan, Akashwani Bhawan
Sansad Marg, New Delhi.
3. The CEO, Prasar Bharti
PTI Building, New Delhi.
4. The Estate Officer
Dte. of Estates
Nirman Bhawan, New Delhi.

...Respondents

(By Advocate Sh. S.M.Arif for R-1-3
Sh. R.N.Singh for R-4)

ORDER

The applicant has challenged the alleged illegal and arbitrary act of the respondents in not regularizing quarter No.29-X, Chitra Gupta Road, Pahar Ganj, New Delhi in his name after the death of his father, which had initially been allotted to his father Sh. Gurmail Singh who was working in Prasar Bharti before his death. He has prayed that the impugned order dated 1-11-2003 whereby the allotment of the said quarter has been cancelled be quashed and set aside and that the said quarter may be allotted to him.

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2. The applicant has been working in Delhi Doordarshan as Film Video Editor since 1996. His father (late) Sh. Gurmail Singh was initially an employee of the Ministry of I&B as S.E.A. and who retired on superannuation w.e.f. 30-6-2003. Unfortunately, he expired on 24.9.2003. As he was staying with his father after his appointment as Film Video Editor, he was not drawing any HRA. He has claimed that, as per the Supplementary Rules, he is entitled to allotment of accommodation as per his eligibility as dependent of his father. While there have been orders issued by the Directorate of Estates from time to time in regard to regularization of allotment of quarters in the name of dependents, the applicant has alleged that the respondents have arbitrarily rejected his request vide their order dated 6-10-2003. The applicant has claimed that the employees of Prasar Bharti are entitled to retain accommodation for a further period of 5 years in terms of the Office Memorandum dated 8-6-2003 as issued by the Ministry of Urban Development and Poverty Alleviation. He has submitted a representation to the respondents on the subject on 2.1.2004 submitting the above facts. But the same has not been considered. Hence this OA.

3. The respondents (respondent No.4) have taken me through their counter reply and have at the outset submitted that the quarter in question had been allotted to the father of the applicant who retired from A.I.R., Prasar Bharti on 30-6-2003. The said allotment was cancelled w.e.f. 1-11-2003 after allowing the permissible period of four months. It has been admitted that the applicant, son of late Sh. Gurmail Singh applied for regularization/ad-hoc allotment of the Govt. accommodation on 5-7-2003 by virtue of the fact that he was working in Doordarshan Kendra (Prasar Bharti) since 27-6-96. His request for regularization was given due consideration by the competent authority, but it was not acceded to for the reason that he was employed in an ineligible department for allotment/regularization of General Pool Residential Accommodation. He was given a reply vide the letter of the respondents dated 6-10-2003 (impugned order at Annexure A-1 to the OA). The respondents have complained that the applicant has been staying in the said quarter unauthorisidely since

1-11-2003 and, as a result, the case has been referred to the competent authority for eviction proceedings.

4. The respondents have further argued that allotment of Govt. residential accommodation is not a service condition and, therefore, the claim of the applicant does not fall under the jurisdiction of this Tribunal. In this regard, they have placed reliance on the decision of the Hon'ble High Court in **Smt. Babli & Anr. v. Govt. of NCT of Delhi & Ors.** [95 (2002) Delhi Law Times 144 (DB)]. It has been submitted that following the judgement of the Hon'ble High Court in the said case, the Tribunal has taken a view that it does not have the jurisdiction to deal with matters of allotment/regularization of Govt. accommodation in various cases. Reference has also been made to the decision of the Tribunal in OA 2088/2002 in **Madan Mohan Khantwal & Anr. v. UOI** and Single Bench order dated 17-3-2003 in OA No.2086/2002 in **Ashok Kumar & Anr. v. UOI & Anr.**, in which the decision of the Hon'ble High Court in Smt. Babli (supra), Sh. Madan Mohan Khantwal (supra) and also another DB decision dated 27-2-2003 in **Prabha Srivastava & Anr. v. UOI & Anr.**, and further SB order dated 23-4-2003 in OA 508/2003 in **Prem Singh Rawat v. UOI & Ors.** have been referred to while arguing that this Tribunal has no jurisdiction in the matter. It has also been argued that respondent No.4 is a quasi judicial authority as appointed and notified under the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and his order and/or proceedings can be challenged only in accordance with the provisions of the said Act and not before this Tribunal.

5. Among the other facts submitted by the respondents are the facts that father of the applicant retired from ineligible office for allotment of General Pool Residential Accommodation. It has also been argued that further retention of Govt. quarter by the employees of Prasar Bharti for 5 years has been extended, but allotment/regularization has been banned. Moreover, the applicant does not fulfill the conditions for regularization of quarter.

6. In his rejoinder to the counter reply, the applicant has disputed the affirmation of the respondents that the applicant has been working in an ineligible Department for allotment/regularization

of General Pool Residential Accommodation and that he is still a Central Govt. employee, and, therefore, he is entitled to regularization of Govt. Accommodation in question.

7. In their oral submissions, the learned counsel for the applicant has referred to Section 11 of the Prasar Bharti Act, 1990 which stipulates as under :-

‘Transfer of service of existing employees to Corporation’

11. (1) Where the Central Govt. has ceased to perform any functions which under Section 12 are the functions of the Corporation, it shall be lawful for the Central Government to transfer, by order and with effect from such date or dates as may be specified in the order, to the Corporation any of the officers or other employees serving in the Akashvani or Doordarshan and engaged in the performance of those functions :

Provided that no order under this sub-section shall be made in relation to any officer or other employee in the Akashvani or Doordarshan who has, in respect of the proposal of the Central Government to transfer such officer or other employee to the Corporation, intimated within such time as may be specified in this behalf by the Central Government, his intention of not becoming an employee of the Corporation.’

8. The applicant has claimed that he has not submitted his option in this regard and, therefore, has argued that he is eligible for claiming the benefit as if he is a Govt. servant. In this connection, he has also referred to the decisions of this Tribunal in OA 1802/98 as passed on 30-10-98 in which the following has been observed:-

‘5. I am impressed by the argument that depriving a transferred employee of accommodation hurts him the most. He cannot concentrate on work, suffers from a sense of insecurity and he does not enjoy the poise to attend to office and do the work. Under the circumstances, after hearing the Id. counsel for respondents, this OA can be disposed of by a direction to respondent No.2 the Director of Estates.

6. Respondent No.2 Director of Estate shall consider the application of the petitioner which is pending before him, consider the opinion of the law Ministry extracted above, the decision of the Supreme Court and dispose of the same in the light of the opinion of the law Ministry within a period of two weeks from the date of receipt of a copy of this order: even ad-hoc accommodation sought for by the applicant can be considered for him.”

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9. Reference in this regard has also been made to the decisions of the Hon'ble Supreme Court in the **State of M.P. & Ors. v. Sh. Prem Prakash & Ors.** (Civil Appeal No.4383 (N) of 1983) dated 23-11-1993.

10. The Id. counsel for the respondents has, however, referred to the aspect of jurisdiction of this Tribunal as held in OA 2086/2002, MA 1704/2002 as decided on 17-3-2003 and in OA 2097/2003 as decided on 21-9-2004 in which the Tribunal has taken a view that it has no jurisdiction in the said cases. In both the cases, reliance has been placed on the decisions of the Hon'ble Delhi High Court in the case of **Smt. Babli & Anr. v. Govt. of NCT of Delhi & Ors.** [95 (2002) DLT 144 (DB)]

11. On perusal of the facts of the case as submitted by both the parties, it is thus observed that the claim of the applicant for allotment of the quarter which had been allotted to his father Sh. Gurmail Singh is essentially based on the fact that his father was initially an employee of the Central Govt. and who subsequently became a part of Prasar Bharti, which is not an eligible office for allotment of General Pool Residential Accommodation under the control of the Directorate of Estates. While reference to Section 11 of the Prasar Bharti Act, 1990 has been made to contend that he is still a Central Govt. employee eligible for allotment of the said accommodation, as he has not conveyed his intention of not becoming an employee of the Corporation, i.e., the Prasar Bharti. According to the learned counsel for the respondents, this provision of the Prasar Bharti Act did not, in any way, stipulate that, on an employee working in Prasar Bharti intimating the Ministry about his intention of not becoming an employee of the Corporation, he would have been deemed to have reverted to the Ministry. In that case, according to the respondents, the employee would have been declared surplus and dealt with appropriately under the relevant rules. In other words, all the employees of Prasar Bharti (Akashvani/Doordarshan) are for all practical purposes their employees and are, therefore, dealt with under their relevant provisions. While the anxiety of the applicant due to non-regularization of the quarter can be appreciated in the light of the observations of this Tribunal in OA 1802/98 as passed on 13-10-98


in which the question of depriving a transferred employee of accommodation and the resultant hardship caused to him has been dealt with, his case is different from that of a transferred employee.

12. Moreover, in the light of the fact that necessary action has already been initiated against the applicant, seeking eviction of the quarter under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, the question of whether this Tribunal has jurisdiction to hear such a case has also become relevant. It has been argued by the respondents that respondent No.4 (Estate Officer, Directorate of Estates, Nirman Bhavan, New Delhi) is a quasi-judicial authority as appointed and notified under the said Act and his order can be challenged only in accordance with the provisions of the said Act and not before this Tribunal. The other arguments given by the respondents that providing accommodation is not a service condition and, therefore, it does not fall within the jurisdiction of this Tribunal also has to be kept in view. Reliance in this regard on the decisions of the Hon'ble High Court in the case of Smt. Babli as referred to in paragraph 3 of the reply of the respondents has also to be taken note of while holding that allotment of the said quarter to the applicant could not have been sought by him as a matter of right. Non-drawl of HRA by the applicant while he was staying in the said quarter which had been allotted to his father also is not quite a relevant factor warranting allotment of the said quarter to the applicant. Prasar Bharti employees are, in any case, to be dealt with under the relevant provisions and decisions and not under the provisions applicable to the Govt. employees. Further, no employee working in the Prasar Bharti can claim benefit under both the organisations, i.e., Prasar Bharti as well as the Government. Provisions under Section 11 of the Prasar Bharti Act comes to the rescue of the applicant only up to a limited point and that too only theoretically. Actual implementation of the said provisions in relation to the applicant or similarly placed persons would certainly involve a matter of policy and interference with that, has to be avoided. In my considered opinion, therefore, there is hardly any room for allowing this OA, particularly in view of ineligibility of the applicant for allotment of the quarter in question which belongs to the Directorate of Estates

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and also that already action has been initiated by the Estate Officer under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and appeal against which does not lie with this Tribunal.

12. Accordingly, finding no merit in the case and also keeping in view the fact that this Tribunal does not have jurisdiction in regard to matters dealt with under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, this OA has to fail and accordingly it is dismissed. No order as to costs.


(Sarweshwar Jha)
Member (A)

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