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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
* * *

O.A. NO. 1269/92

DATE OF DECISION : 25.09.1992

Shri S.R. Pipil

...Applicant.

vs.

Union of India & Ors.

...Respondents

CORAM

Hon'ble Shri J.P. Sharma, Member (J)

For the Applicant

...Shri Manoranjan

For the Respondents

...Shri P.P. Khurana

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

JUDGEMENT

The applicant, Junior Accounts Officer, Civil Construction Wing, All India Radio is aggrieved by the order of Assistant Director of Estates dt. 27.1.1992 (Annexure A13) whereby the applicant was informed through the Executive Engineer, All India Radio, Silchar that the allotment offer is subject to clearance of rental arrears and an arrear of Rs.48,945 is due from 30.11.1991 regarding Quarter No.17/5 Andrews Ganj, New Delhi and the applicant

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should clear all the arrears to become eligible for allotment of Type-D accommodation. The applicant has claimed the relief that the cancellation of the allotment order dt. 5.12.1988 be quashed and alternative accommodation one type below be allotted to the applicant and also the order dt. 27/28.1.1988 for recovery of Rs.49,945 be quashed.

2. The facts of the case are that the applicant was allotted general pool accommodation No.17/5 Andrews Ganj while he was working as JAO. By the order dt. 31.5.1988, the applicant was transferred to Silchar in Assam which falls under the North Eastern region in the office of the Executive Engineer (C), Civil Construction Wing, All India Radio, Silchar. The applicant maintained his family at Delhi in the allotted premises at Andrews Ganj. The applicant made a request through a letter dt. 3.6.1988 (Annexure A1) that the applicant be allowed to retain the quarter No.17/5 Andrews Ganj. The applicant hereafter on learning

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about the rules sent the application through the Head of the Office in prescribed proforma on 14.10.1988 (Annexure A2). Inspite of this, the allotment of the applicant was cancelled w.e.f. 31.7.1988. The applicant again moved the Directorate of Estates to allot him a type below quarter instead of quarter No.17/5 Andrews Ganj by the letter dt. 7.2.1989 (Annexure A5). Another reminder was sent on 13.7.1989 through the Executive Engineer (Annexure A6) and another letter of 19.7.1989 (Annexure A7). He has also sent the necessary affidavit as desired by the respondent No.3 by the letter dt. 14.9.1989 (Annexure A8). The applicant was informed that he is not covered by the Allotment Rules. In reply, the applicant again through proper channel sent a detailed reply to the letter dt. 2.2.1990 which informed the applicant that his request for retention of the said premises cannot be acceded to, stating again all the facts and requested for reconsideration of the decision in the light of the various OM issued by the Ministry of

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Human Resources and Urban Development. The applicant ultimately was served with an eviction order dt. 5.3.1990 and submitted an appeal under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 in the Civil Court. The said appeal was dismissed, but with the observation that the dismissal of the appeal will not effect the rights and the duties of the parties to allot alternative accommodation or an accommodation which the appellant is found to be entitled owing to his transfer to Assam in case he applies afresh. In pursuance of this, the applicant again applied afresh instead of allotting alternative accommodation, a pre-condition was set out that the applicant should deposit a sum of Rs.48,945. The applicant submitted a detailed reply to the said letter. The present application, therefore, is against the aforesaid letter dt. 27/28.11.1992.

3. The respondents were issued notices on 12.5.1992 to file their reply and since then the matter was adjourned to various dates. The respondents were finally allowed time, on 25.8.1992 and in case of failure, the matter was

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to be disposed of finally. The respondents, however, did not file any reply, but the learned counsel for the respondents, Shri P.P. Khurana along with Shri J.C. Madan appeared on 18.9.1992.

4. The arguments of the learned counsel for the parties have been heard at length. The undisputed facts are that the applicant in the public interest has been transferred on 31.5.1988 to Silchar in Assam which falls under the North Eastern region. The Government of India, Ministry of Urban Development (Directorate of Estates) OM No.12035(24)/77 POL.II dt. 26.3.1987 as extended from time to time entitles a Government servant to retain a Government accommodation when transferred to North Eastern region on certain conditions being fulfilled. The transfer order in this case as said above is dt. 31.5.1988. The applicant informed the Directorate of Estates, Nirman Bhawan on 3.6.1988 after having been relieved from Delhi before proceeding to new place of posting of his intention to retain the allotted quarter for his family. Thereafter

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the applicant from Silchar through the Executive Engineer (Civil), Construction, All India Radio, Silchar in prescribed preforma sent the application for retention of the said accommodation. The applicant has not been allotted a Type below accommodation as expressly laid down in the above OM dt. 26.3.1987 extended from time to time. The annexures filed to the application by the applicant go to show that the applicant has left no effort in convincing the respondents that the said OM of 1987 entitles him to retain the said accommodation or a type below on the prescribed payment of licence fee. It is evident from the annexure A8, which is a letter dt. 29.6.1989 that a declaration was sought from the applicant by the Assistant Directorate of Estates that he does not own his house at Delhi or New Delhi. The applicant has submitted an affidavit on 12.9.1989 that neither he nor any member of his family owns a house at Delhi or New Delhi. In reply to this, the Assistant Director of Estates vide letter dt. 2.2.1990 informed the applicant that it has not been possible to accede to his request as the same is not covered under the Allotment Rules. But no

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reasons or specific rule has been cited as to how the applicant who has been transferred to North Eastern region is not entitled to the benefit of the OM of 1987.

The applicant, however, proceeded to make further representations with the respondents, but to no effect.

Thus it appears that the respondents have not followed their own circular in this regard and obtained an eviction order from the Directorate of Estates which, of course, has been upheld by the Additional District Judge because of the fact that the allotment was cancelled and the District Court could not go into the merit of the cancellation of the allotment order. The Additional District Judge observed that since the applicant was supposed to apply for alternative accommodation within a period of one month from his transfer and he having failed to do so, the cancellation of the demise premises cannot be turned wrong. It is further observed that the eviction order passed against the applicant becomes valid. Thus as far as the eviction was concerned, it was held to be perfectly justified and needs no interference.

5. This observation of the learned Additional District

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Judge, however, cannot now bar the applicant to enforce the aforesaid OM of 1987 for allotment of the type below accommodation in his favour. Since the various annexures attached to the various applications have not been denied nor any counter has been filed by the respondents to rebut the various averments made in the application for applying to the respondents through proper channel within time, so it cannot be said that the applicant has been at fault. The applicant has stated in para 4(d) that he applied for retention/allotment of the premises through proper channel duly forwarded by the Executive Engineer (Civil), CCW, AIR, Silchar on 14.10.1988. Inspite of this fact, the allotment in the name of the applicant was cancelled vide letter dt. 5.12.1988 intimating that the allotment has been cancelled on 31.7.1988, i.e., two months after the transfer of the applicant to North-East region. Even if there might be some delay in receiving the request of the applicant by the respondents, Directorate of Estates, then the respondents themselves in 1989 asked the applicant to furnish further details whether he or any member of his family owns a house at Delhi or New

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Delhi and having accepted the affidavit of the applicant, denying owning any house at Delhi or New Delhi, the respondents were bound to consider the request of the applicant for allotting a residence or retention of the same allotted quarter in view of the OM of 1987, referred to above and which was still in force in 1989. The Directorate of Estates having not done so cannot take advantage of its own wrong and lay down a precondition of deposit of penal rent for certain period for allotting a type below quarter to the applicant.

6. In view of the above facts, the impugned order cannot stand. The application is, therefore, allowed. The respondents are directed to allot the applicant a type below quarter and the applicant shall pay the licence fee from the date of his transfer to the respondents as per the directions given in OM of 1987, referred to above. The respondents are directed to comply with the above directions within a period of three months from the date of receipt of a copy of this judgement. Till such time the applicant shall not be evicted from the

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alleged Government accommodation. In the circumstances,
the parties shall bear their own costs.

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