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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

OA No.1560/92

Date of decision: February 8, 1993

Shri Kishan Lal & anr. .. Applicants
versus

Union of India through
Secretary,
Ministry of Communications & ors... Respondents

CORAM: THE HON'BLE SHRI P.C.JAIN, MEMBER(A)
THE HON'BLE SHRI J.P.SHARMA, MEMBER(J)

For the Applicants .. Shri R.L.Sethi, counsel
For the Respondents .. Sh.A.K.Sikri, counsel

JUDGEMENT

Hon'ble Shri P.C.Jain, Member(A):-

The facts which have led to the filing of this OA under Section 19 of the Administrative Tribunals Act, 1985 may briefly be stated as below:-

Applicant No.1 Shri Kishan Lal was working as Jamadar Packer in Delhi General Post Office and retired on 31.10.87. While in service he was allotted Quarter No.15, Sector VI, R.K.Puram, New Delhi. After his retirement as aforesaid, allotment of the said quarter was cancelled with effect from 1.8.1988 but he did not vacate the same and eviction proceedings were therefore, started under the Public Premises (Eviction of Unauthorised Occupants) Act, No.1 1971. The appeal of the applicant / was rejected on 15.2.92. Applicant No.2 is the son of Applicant No.1 and he is said to be employed in Hauz Khas Telephone Exchange, New Delhi which is under the control of Mahanagar Telephone Nigam Limited (for

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short, MTNL) which have filed a counter affidavit for Respondent No.2. It is the contention of applicant No.2 that he had been residing with his father for more than three years before the latter retired from service and that he has not claimed any House Rent Allowance while so residing. It is also contended that he fulfils all other conditions prescribed for transfer of the quarter allotted to his father in his name from the date of retirement of his father. His request in this regard has been rejected vide letter dated 15.5.92(Annexure A1). Hence this OA.

2. It may also be stated that three parties have been arrayed as respondents in this case and these are as below:-

- (1) Union of India through Secretary, Ministry of Communications, New Delhi.
- (2) The Chief General Manager, Delhi Telephones, K.L.Bhawan, New Delhi.
- (3) The Postmaster General(Estate Office), Delhi Circle, Mohan Singh Place, New Delhi.

Separate counter replies have/ ^{been} filed on behalf of Respondents 2 & 3 ~~to which~~ to which applicants have also filed rejoinder. We have perused the material on record and heard the learned counsel for the parties.

3. Against the order passed in appeal under the Public Premises(Eviction of Unauthorised Occupants)

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Act, 1971, by the Additional District Judge on 15.2.92, the applicants filed OA No.630/92 before the Tribunal which was decided on 24.3.92. In the judgement in OA 630/92 it was held as below:-

" So far as the impugned order dated 15.2.92 is concerned, the same had been passed by the Additional District Judge under Section 9 of the Public Premises Eviction of Unauthorised Occupants Act. This order cannot be challenged before the Tribunal, as the same does not fall within the purview of Section 14 of the Administrative Tribunals Act."

It is thus clear that so far as applicant No.1 is concerned, he having retired on 31.10.87, eviction order passed against him, his appeal against the aforesaid order having been rejected, and the judgement of the Tribunal in OA No.630/92, as stated above, the claim of applicant No.1 for continuing to occupy the quarter allotted to him while in service has been finally adjudicated between the parties. As regards the claim of applicant No.2 for transfer of the aforesaid quarter in his name with effect from 1.11.87, he has relied on the following instructions:-

" (Swamy's-Manual on Establishment & Administration)

When a Government servant in occupation of General Pool accommodation retires from service his/her son, unmarried daughter, or wife or husband, as the case may be, is allotted accommodation from the General Pool on ad hoc basis, if the proposed allottee satisfies the following conditions:-

1. Should be eligible for allotment from General Pool.
2. Should have resided continuously for the last three years or more with the retiring employee. If appointed or transferred to the

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station within three years, the limit may be reduced accordingly.

3. Should not have been drawing HRA while so residing.
4. Neither the proposed allottee nor the retiring employee should own a house in the station.
5. All dues/outstandings pertaining to the premises occupied by the retiring employee should have been completely cleared.

The allotment will be one type below the proposed allottee's entitlement, but not higher than the type occupied by the retiring employee, except in special circumstances."

Apart from the preliminary objection raised in the counter of Respondent No.2(MTNL) about the jurisdiction of the Tribunal in this matter, they have stated that conditions No.2 & 3 of the conditions extracted above, are not fulfilled in the case of applicant No.2 as also stated in the impugned order at Annexure A1 in which it is stated that applicant No.2 has been working as R/M with effect from 26.7.83 but he started residing with his allottee father only from December,1985 as per his application and has not drawn his HRA for 1 year and 11 months from December,1985 onwards. Thus, there is no doubt that if applicant No.2 had in fact been residing with his father for a period of at least three years before the retirement of his father, the HRA drawn by him upto November,1985 debars him from concessional allotment on retirement of his father. If the non-drawal of the HRA is taken to be /basis, he cannot be said to have resided with his father for a period of at least three years or more before his father's allotment. The additional

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documents filed by the applicants on 22.10.92 with a view to substantiate that applicant No.2 had been residing with his father since his employment with Respondent No.2 with effect from 26.7.83, do not help them. The photocopy of the document as Annexure A5 is a C.G.H.S.card in the name of applicant No.2., the date of issue ^{of which} /is not mentioned but the date below the signature of the issuing authority is 12.3.84. The document at Annexure A6 is undated. The document at Annexure A7 is the C.G.H.S. card of the father and mother of applicant No.2 issued in 1990. The other document is the School leaving certificate of applicant No.2 which has no relevance. Moreover, neither the quarter allotted to his father appears to be of the General Pool as he was an postal employee of the Postal Department which has a separate pool, nor applicant No.2 being an employee of MTNL is entitled to allotment of $\frac{3}{4}$ quarter from the General Pool.

Therefore, even in terms of the conditions relied upon by applicant No.2, he does not appear to be eligible. The applicants have relied on a judgement of the Tribunal in OA No.1905/90 (Shri Raj Singh Vs.U.O.I through Secretary,Min.of Urban Development & Another) decided on 10.2.92. That judgement does not help the applicants as in that case, the father had been allotted accommodation from the General Pool and his son was also eligible

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for allotment of accommodation from the General Pool.

4. In the counter affidavit filed on behalf of Respondent No.2, a preliminary objection has been raised. It is contended that Respondent No.2 i.e. MTNL is a company incorporated under the Companies Act and ^{an} autonomous body and that there is no notification under Section 14(2) of the Administrative Tribunals Act, 1985 bringing it within the jurisdiction of the Tribunal. It is also stated that accommodation is to be allotted by the MTNL to the applicant on the basis of seniority when his turn comes. For this purpose, they have relied upon a judgement of the Tribunal in OA No.1835/91 decided on 23.9.91. One of us (Hon'ble Shri P.C.Jain) was also a party to that judgement. It was held therein that as no notification had been issued by the Central Government under sub-section(2) of Section 14 of the Administrative Tribunals Act, 1985 to bring respondent No.2 within the jurisdiction of the Tribunal, the Tribunal has no jurisdiction in the matter. That no such notification has yet been issued is not in dispute and cannot be disputed. However, in the rejoinder, the applicants have stated that MTNL has not been arrayed as one of the respondents ^{and} they have no locus standi. This contention does not help the applicants inasmuch as applicant No.2 made request to MTNL for transfer

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of the quarter allotted to his father in his name. Moreover, they have assailed in this OA the communication which had been issued by the MTNL. The applicants have been in occupation of the quarter ^{for} ~~for~~ one interim order or another for more than 4 years. As already stated above, the claim of applicant No.1 to continue to occupy that quarter has already been finally adjudicated upon against him. The claim of applicant No.2 for regularisation of the above quarter in his name is not accordance with the conditions laid down for the purpose and on which he has placed reliance. This is being held even presuming that applicant No.2 has ^{no} ~~no~~ claim for regularisation as an employee of the Union of India rather than of MTNL. If he is an employee of the MTNL on the date this OA has been filed and which fact has not been effectively rebutted by him, he cannot challenge the impugned order issued by the MTNL before the Tribunal.

5. In the light of the foregoing discussion, the OA is dismissed as devoid of merit and the interim order passed on 9.6.92 stands automatically vacated, leaving the parties to bear their own costs.

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

P.C. Jain
(P.C.JAIN)
MEMBER(A)