

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

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10. 12.92

O.A. No. 1604/92

Shri Promod Kumar Garg

...Applicant

vs.

Union of India & Ors.

...Respondents

CORAM :

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

For the Applicant

...Shri S.S. Tiwari, counsel

For Respondents Nos. 1 to 3

...Mrs. Raj Kumari Chopra,  
counsel

For Respondent No. 4

...Shri J.C. Madan, proxy  
counsel for  
Shri P.H. Ramchandani,  
counsel

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

2. To be referred to the Reporter or not?

JUDGEMENT

Shri Promod Kumar Garg, Superintendent B/R Grade I  
under Chief Engineer, Delhi Zone was allotted premises

No.1-13, Civil Zone, Subroto Park, New Delhi on 3.7.1989 while  
he was posted under Chief Engineer, Subroto Park. He was  
posted out to Chief Engineer, Delhi Zone w.e.f. 26.4.1991.

He was, therefore, asked to vacate the same by the Memo  
dt.8.1.1992. Since he did not vacate inspite of service of  
notice dt.10.1.1992 and also in pursuance of his undertaking  
dt.27.1.1992 stating that he will vacate the said  
accommodation on 31.5.1992, failing which damages rate of rent  
may be charged. Since he did not vacate the same, the

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eviction order dt.9.6.1992 was issued under Public Premises (Eviction of Unauthorised Occupants) Act, 1971. In this application, the challenge is to the aforesaid order (Annexure A3) of eviction and recovery of damages. The applicant has prayed for the following reliefs:-

- (a) Set aside and quash the impugned orders of eviction dated 9.6.92;
- (b) As a consequence the impugned order of recovery of market rent dated 9.6.92 may also be quashed;
- (c) Direct the respondents to allow the applicant to retain the present accommodation until an alternative accommodation is provided by the respondents on payment of normal licence fee;
- (d) Pass any other order/s as may be deemed just and proper;
- (e) Award costs.

He has also prayed for the grant of an interim order. The Vacation Bench by the order dt.23.6.1992 ordered, "In the meanwhile, the respondents are restrained from evicting the applicant from the Government quarter No.L-13, Civil Zones, Suhroto Park, New Delhi-110010. He will continue to pay the normal rent in accordance with the Rules."

The applicant averred in the OA that he joined as Superintendent B/R Grade II on 28.3.1966 and was allotted the Government accommodation as per his seniority. He was locally

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transferred to Chief Engineer, Delhi Zone on 26.4.1991. He also applied for allotment of an accommodation to Chief Engineer, Delhi Zone, but in vain. It is also stated that his case was duly recommended by Chief Engineer, Delhi Zone to Station Commander, Station Headquarter, Delhi Cantt., but Non Availability Certificate was issued to him.

"I, Promod Kumar Garg (M.R. : 308485) Superintendent B/R at present in the strength of CE/DZ and occupying ME key personnel Quarter No.L-13, Civil Zone at Subroto Park, hereby undertake that I shall vacate the said SMQ by 31.5.1992 (R) 31st May, 1992. Failure of which I shall be charged with damage rate of rent from the date I was SOS from the strength of C.E./SP

on posting to C.E., DZ.

Signature  
Supdt. B/R I

(P.K. GARG)  
MES 308485  
13.3.1992"

I have heard the learned counsel for both the parties. The case of the applicant is based on Government of India, Ministry of Defence Letter No.7(f1)/85/D dt.6.1.1986. The reliance has also been placed on the common judgements given in OA 1965/91, OA 2018/91 and OA 2028/91 decided on 3.4.1992 (Annexure B-I). In all these applications, the issue involved was recovery of penal rent of the allotted premises because of the fact that allottees did not obtain necessary permission of retention of the allotted premises as was prescribed under administrative instructions. Shri C.P. Sharma, applicant in OA 2028/91 was again posted in C.E., Subroto Park. In OA 1965/91, Ajai Sanswal was transferred to Ganganagar, Jaipur and Station Commander had agreed for retention of the quarter by him. In OA 2016/91 of Shri T.D. Verma, he was allowed to retain the quarter on tenure posting. On return from tenure posting, he was posted in C.E., Delhi Zone and was served with the notice for the recovery of damage rent. In the case of Shri T.D. Verma, who was Surveyor Assistant Grade I, on the basis of the levying of damages in a similar case of Shri N.K. Sharma, the order of recovery of damages from him was discriminatory, so the relief prayed for was granted. There was no undertaking given in any of these cases by those applicants as in the present case. There was no admission in

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the undertaking as in the present case by the applicant that allotted quarter is of key personnel category. The 'out of turn allotment' objection in those applicants was not taken by the respondents as in the present case. Thus the judgement can not be said to decide the ratio that even after transfer from the post held as a key personnel in one zone, the said premises shall be retained at the cost of essential category of employee awaiting allotment. The objection taken in the present case that the applicant is out of turn allottee and not a regular allottee was not taken in the case of the applicants in the cited judgement. A decision ordinarily is a decision in the case before the Court while the principle underlying the decision would be binding as a precedent in a case which comes for decision subsequently (AIR 1986 SC 468-Prakash Amritchand Shah vs. State of Gujarat). A case is only an authority for what it actually decides and not what logically follows from it (AIR 1985 SC 218-Amaresh Om Prakash vs. State of Punjab).

Coming to the second aspect of the matter that the applicant be allowed to retain the present premises till he is allotted an accommodation in the C.E., Delhi Zone, the reliance on the instructions of letter No.6.1.1986 (supra) has been misplaced as the case covers the regular allottees only. Allotment/vacation order (Annexure R1) shows the quarter in question is the key personnel quarter. The reply filed by respondent Nos.1, 2 and 3 clearly states that respondent No.3

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allotted the quarter on out of turn basis keeping in view the requirement of the work in the administrative interest. The Station Head Quarter Delhi Cantt. letter dt. 23.1.1992 (Annexure E) clearly shows that the applicant can not be allotted the quarter being too junior. The current Sr. is of 1958 while the applicant as is evident from para 4(i) of the application, joined in 1966.

The main thrust of the learned counsel for the applicant is on the judgement in OA 1965/91 (supra), but a judgement is in authority on the facts decided in it and it cannot be interpreted in a manner that it is applicable in the different facts and circumstances of another case. In this connection, authorities regarding the precedents have been referred to above.

The main question which arises for decision is whether Shri Promod Kumar Garg, while he was posted as Superintendent B/R Grade I in Subroto Park was allotted the premises on the basis of his seniority and as such, on his transfer to Chief Engineer, Delhi Zone, he is entitled to retain the same till an alternative accommodation is allotted to him. The case of the applicant that he was forced to give an undertaking on 13.3.1992, the burden lays heavily on the applicant to show that he has given that undertaking under pressure or coercion. In that undertaking, in the month of March, 1992 filed by the respondents as Annexure R5 to the counter, it goes to show

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that the applicant was facing eviction on the basis of pending proceedings under Public Premises (Eviction of Unauthorised Occupants) Act, 1971. In fact, it is the order of eviction dt.9.6.1992 which the applicant has challenged in this case. The said authority has considered the various rules of allotment and passed the impugned order which specially states that the Government Married Accommodation was allotted to him when he was posted in the strength of Garrison Engineer, Subroto Park as a MES key personnel of Subroto Park. This observation in the judgement is supported by the undertaking given by the applicant on 13.3.1992 (Annexure R5) where the applicant has written that he has been occupying MES key personnel quarter No.L/13 Civil Zone at Subroto Park. This admission of the applicant does not call for any further probe into the matter whether the trade of B/R comes within the category of key personnel or not. In any case, this fact is also supported by the allotment order (Annexure R1) in favour of the applicant dt.3.7.1989. The heading of the order itself shows that the accommodation L/13 is a MRS key personnel quarter. Army Headquarter's letter dt.29.10.1991 (Annexure R2) also goes to show that the key personnel quarters are reserved for such employees of Civil Defence whose presence is required within the campus for attending to essential civil services in the stations/maintenance. List of trades appended at the bottom of this letter also mentions b/R trade at Serial No.1. Thus the admission made by the applicant in the

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undertaking of March, 1992 is absolutely in line with the above Army Headquarter letter dt. 29.10.1991. The contention of the learned counsel for the applicant that the trade of B/R does not come within the category of key personnel cannot be accepted on the face of the documents on record.

It has already been discussed above that the applicant by virtue of his seniority is not entitled to allotment because as is evident by Annexure E to the application dt. 23.1.1992 that the current seniority for allotment to general pool accommodation is 1958 while the applicant has joined with the respondents as Superintendent B/R Grade II in 1966. The question that arises is whether a person who has not reached the seniority for allotment of general pool accommodation, then the Station Headquarter can still allot the accommodation to such an incumbent on out of turn basis. No rule or guideline or administrative instructions have been cited or filed by the applicant to show that he is entitled to out of turn allotment and merely because at one point of time when he was posted as a key personnel at one of the units, i.e., Chief Engineer, Subroto Park, then in case of transfer to another unit, i.e., Chief Engineer, Delhi Zone, he shall be still provided with an alternative accommodation and till that time he can retain the earlier one. In view of this fact, the applicant has not made out a case for retention of the present accommodation or for consideration for allotment of an alternative accommodation on out of turn basis.

(b)

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As regards the quantum of damages for retention of the premises after his transfer to Chief Engineer, Delhi Zone by the order dt. 26.4.1991, there is implied permission to retain the quarter on the basis of the undertaking given by the applicant till 31.5.1992 and beyond that he is liable for payment of compensation for use and occupation according to the Extant Rules.

In view of the above discussion, the impugned order dt. 9.6.1992 does not call for any interference except that for <sup>the</sup> recovery of market rent, the applicant shall be liable for the same from 1.6.1992 and the application is partly allowed only to that extent. The other reliefs claimed by the applicant are disallowed. In the circumstances, the parties shall bear their own costs.

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