

In the Central Administrative Tribunal
Principal Bench, New Delhi

1. Regn. No. DA-2212/92
2. Regn. No. DA-2214/92

Date: 22.7.93

1. Shri S.C. Bose } Applicants
2. Shri R.L. Mattu }

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Union of India & Ors. Respondent.

For the Applicants Shri A. K. Behra, Counsel

For the Respondents Shri K.C. Mittal, Counsel

CORAM: Hon'ble Mr. J.P. Sharma, Member (Judl.)

1. To be referred to the Reporters or not?

Single Bench Judgement

(By Hon'ble Mr. J.P. Sharma, Member)

Both the applicants, by separate applications under Section 19 of the Administrative Tribunals Act, 1985, have challenged the action of the respondents in charging damage rent in respect of the quarter allotted to them while they were posted in the office of the Principal Director of Audit, Posts & Telecommunications Pool, working as Auditor in that office. Subsequently, both the applicants were transferred to the Posts and Telecommunications Audit Office, Delhi. Since the employees working in the said Audit Office, Delhi are not entitled to Principal Director of Audit (P&T) Pool accommodation and are entitled to General Pool accommodation controlled by the Directorate of Estates, Ministry of Urban Development, vacation orders were issued against the

applicants and those orders have ^{also} been challenged.

2. Both the applicants separately in ^{both} these applications have prayed for the grant of the following reliefs:-

(a) A declaration that the applicant is in authorised occupation of the quarter allotted to him while working as Auditor in the office of the Principal Director of Audit, P & T, Delhi and a direction to the respondents to allow the applicant to retain the said accommodation at normal licence fee till he gets the General Pool accommodation.

(b) A further direction to the respondents to refund the excess of the licence fee charged from the applicant over and above the normal licence fee.

(c) Pay and allowances w.e.f. March, 1991 after deducting his normal licence fee only and also they be directed to pay the interest on the withheld amount of payment at 12% per annum besides the cost of the present application.

3. Since both the applications involve the same questions of facts and law, they are being decided by a common judgement.

4. The facts of the case of Shri S. C. Bose, applicant in OA-2212/92 are that while working as Auditor, he was allotted in 1974 Quarter No. 12/4-A, DIZ Area, Sector II, Goal Market by Principal Director of Audit, P & T Pool. The other applicant in OA-2214/92 was allotted Q. No. 1. The cadre of permanent Auditors was abolished in December, 1982, making the applicant as surplus, whereby a civil suit was filed before Sub-Judge, Delhi challenging the action of the respondents. That civil suit No. 19/83 was transferred to C.A.T., Principal Bench and registered as TA-311/86 and was dismissed by the order dated 8.6.1989 (Annexure A-1). The respondents have given effect to that order and by the order dated 1st August, 1990, the allotment in favour of both the applicants was cancelled. Here, it may be made clear that while the above civil suit was pending before Sub-Judge, Delhi, the plaintiffs of that civil suit challenged the order of the trial court whereby the application was dismissed for grant of temporary injunction. The Appellate Court also upheld that order. So, the plaintiffs of that case filed a revision petition under Section 115 C.P.C. for revision of that order before the Delhi High Court and the Delhi High Court, by the order of July 4, 1983, ordered that the respondents to place the plaintiffs in the branch office at Delhi till the disposal of the suit and not outside Delhi. It was further ordered that the Government accommodation in which some of the plaintiffs are residing, would not be taken away from them till the disposal of the suit.

These interim orders also continued during the pendency of the case in the Tribunal (TA-311/86). As said above, the civil suit was dismissed by the Tribunal by its judgement dated June 8, 1989. The applicant remained posted in the Posts & Telecommunications Audit Office, Delhi. It is averred by the applicants themselves in para 4.8 that the employees in the Posts & Telecommunications Audit Office, Delhi are entitled to General Pool accommodation and are not entitled to departmental accommodation. The applicant in both the original applications made representations against this order of cancellation of October 1, 1990 and by the order dated 7th January, 1991, both of them were allowed to retain the premises till 31st January, 1991 and from 1st January, 1991, the rate of damage rent in the case of Shri S.C. Bose at the rate of Rs. 660/- per month and in the case of Shri R.N. Mattoo, at the rate of Rs. 1427/- per month has been levied. A photocopy of the order dated 7th January, 1991, is filed in both the cases as Annexure A-5. The Posts and Telecommunications Audit Office, Delhi has forwarded the applications of both the applicants to the Assistant Director of Estates for allotment of General Pool accommodation to which they were entitled by virtue of their posting as Auditor in the Posts & Telecommunications Audit Office, Delhi. It appears that by the order dated December 5, 1991, the

Director of Estates gave sanction for ad hoc allotment of residential accommodation to both the applicants of Type 'B' without restriction of locality/floor (Annex, A-X). In the case of Shri R.N. Mattoo (OA-2214/92), instead of Type 'B', Type II accommodation is mentioned in the aforesaid letter.

5. The facts of the case of Shri R.N. Mattoo are almost similar, except that he was working in the same office earlier (DAP&T) and was posted to P & T Audit Office, Delhi. He was allowed Quarter No. B-55 at Thomson Road, New Delhi in 1976 while working as Auditor in DAP&T. The main facts of both the cases are similar except that by the order dated January 7, 1991 (Annex, A-10), he has been levied damage rent at the rate of Rs. 1427/- per month w.e.f. 1.2.1991. These are undisputed facts of both the cases.

6. Since the applicants in both the OAs did not vacate the quarters, proceedings under P.P.E. Act, 1971 were drawn against them separately. It is in view of Rule 9 of the DAP&T (Allotment of Accommodation) Rules, 1983 which provided that the allotment in favour of any employee posted in DAP&T, shall cease or stand cancelled in the event of transfer to another office in Delhi, the employee can retain the premises for two months more.

Rule 20 of the said Rule provides for levying damage rent as laid down in SR-317-B-22 that the discretion given to

the Principal Director of Audit to allow retention of the premises on payment of twice the standard licence fee upto a period of six months beyond the period permitted under Rule 9(2). It also appears that in the proceedings drawn under P.P.E. Act, 1971, on the undertaking given by these applicants that they will vacate the premises by 31.8.1992, no further action under P.P.E. Act was taken and the proceedings are pending (Annexure A-10 in both the OAs). It is in the light of the above that the arguments of the counsel of the parties have to be appreciated.

7. The respondents, in their reply in both the cases, have taken almost the same stand and opposed the grant of reliefs prayed for by the applicant in their respective original applications. They have taken the stand that the applicants while working as Auditor in the then office of the Accountant General, Posts & Telegraphs, Delhi (Now called, 'Office of the Principal Director of Audit, P&T Delhi), applicant Shri S.C. Bose, was allotted a departmental pool accommodation in April, 1974, while the other applicant, Shri Mattoo, was allotted in the same circumstances the Pool accommodation in the year 1976. On transfer of the applicants to the P&T Audit Office, Delhi w.e.f. 7.1.1983, the said allotment stands cancelled w.e.f.

31st January, 1991 and both the applicants are unauthorized occupants of the aforesaid allotted quarters in their respective offices. Though the applicants were transferred in 1983 to the P&T Audit Office, but since the applicants and other assailed the matter before the Delhi High Court which

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ultimately decided by the C.A.T., Principal Bench, on 8th June, 1989, so the final decision was taken some time in August, 1990 in consultation with the C&G. The applicants have no case for retention of the aforesaid quarters and, in fact, they have given a clear undertaking before the Director of Estates to vacate the said quarters of quarters after taking extension of retention for a few months. The applicants, in spite of the undertaking, did not vacate the quarter and are liable, therefore, to pay the damages for unauthorised occupation. It is further stated that the policy decision taken on 28th February, 1968 was an administrative decision communicated under C&G's Office G.O. dated 30th November, 1974, is not at all relevant to the present cases of the applicants. The applicants have no case and their applications are liable to be dismissed.

8. I have heard the learned counsel for the parties at length and perused the records. The first contention of the learned counsel for the applicants is that in order to have reciprocal arrangement regarding ad hoc allotment of General Pool accommodation to officers occupying Departmental Pool accommodation, on their transfer to eligible offices in Delhi/New Delhi and vice versa, the applicants are entitled to retain the present accommodation till they are given alternative

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eligible accommodation from the General Pool. The contention of the learned counsel cannot be accepted in view of the categorical averment by the respondents in para 4.7 of the reply that no such reciprocal agreement/arrangement has been reached, nor communicated to the office of the respondents for ad hoc allotment of accommodation between General Pool and the then DAP&T Pool (Now, Principal DAPT Pool). The applicants in the rejoinder in both the applications in reply to the counter of the respondents, reiterated the averments made in the O.A. and stated that on the basis of reciprocal arrangement, Shri Ram Chand Gupta, Naresh Kumar, D.S. Bakshi and B.G. Bhardwaj, were neither asked to pay damage charges, nor were they forced to vacate the General Pool accommodation occupied by them. However, when the clear averment made by the respondents that no such reciprocal arrangement has been arrived at between the two organisations of Union of India, that fact has to be accepted and merely because certain persons were given certain benefits or treated in another manner, would not by itself make the averment in the reply unacceptable. Thus, there is no reciprocal arrangement between the two i.e., DAP&T Pool and the General Pool.

9. The second contention of the learned counsel for the applicants is that the policy decision of 28th Feb 1968 duly approved by the Minister of State for Communications to the effect that when an employee of the Of

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P.D.A.P&T eligible for Departmental Pool accommodation is transferred to an office which is not eligible for Departmental Pool accommodation but is eligible for General Pool accommodation, then in that event, the said employee would be allowed to retain the Departmental Pool accommodation at normal licence fee till the employee gets a General Pool accommodation. It is further argued by the learned counsel that this policy decision was further reinforced by the d.o. letter of C&AG dated 30th November, 1974. The respondents have a number of reservations on this count. The learned counsel, Shri K.C. Mittal, argued that the position of 1968 cannot be made applicable to the present prevailing circumstances because of the detailed averment in para 4.16 of the reply. To summarise the same, it is averred that in the year 1967, a decision was taken by the departmental authorities to abandon P&T quarters at Thomson Road, as they needed extensive repairs. The staff, however, did not agree. So, the existing quarters were extensively repaired. It was also decided that these quarters were to be exclusively utilised for the staff of the Accountant General, P&T and not for the staff of the DAP(P&T). Such of the occupants who were not working in the office of the A.G., P&T, must apply to the Director of Estates and on accommodation being made available, they should vacate the quarters.

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10. It is further argued by the learned counsel that the Headquarters Office of the A.G., P&T was moved from Simla in 1942. Some of the residential quarters were allotted by the AG, P&T to the staff of the Office of the DAP&T because they were not needed by the staff of the Headquarters Office of the AG, P&T. However, after an interval of nearly 25 years, the Headquarters Office of AGP&T, started shifting back from Simla to Delhi in December, 1966 and the shifting in batches continued till 1969. The coming back of the staff of Headquarters Office necessitated getting back these quarters of AGP&T which had been allotted to the staff members of the Office of the DAP&T. Those who did not vacate, the allotments were cancelled and since some of them started sending representations, the C&AG Office in Delhi on 30th November, 1974, communicated that the employees of the Office of the DAP&T, Delhi, including deputationists, who were occupants of the AGP&T's Pool quarters, were to be allowed to continue in occupation of the same, provided they apply for General Pool accommodation and on allotment of General Pool accommodation, they were to vacate the AGP&T quarters. It is, therefore, argued and rightly so, that the d.o. letter of 30th November, 1974 was applicable only to the original allottees of the Office of the DAP&T, Delhi, who were allotted AGP&T's quarters in between the years 1942 and 1968, when the office was shifted to Simla. I have

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After having heard and after having fully considered this matter carefully and the policy decision of the Government of India and the decision of the Central and State Government of 28th February, 1968 and C&AG's decision contained in the aforesaid letter dated 30th November, 1974 are not applicable to the applicants, as Shri Bose was allotted the accommodation in the year 1974 and Shri Mattoo, in the year 1976.

The argument of the learned counsel for the applicants is also that Shri Jagdish Lal Dhamija was also transferred from the Office of respondent No.2 to the office of respondent No.3 in May, 1979 and Shri Kanad Bhattacharya, who was similarly transferred as Section Officer to the Office of Respondent No.3, were allowed to retain the Departmental Pool accommodation. Two other instances, one of Smt. Anjana Das, Deputy Director, and Shri V. Mohan, Director, have also been cited, who were not posted in the Office of respondent No.2, and were working with respondent No.3 but retained the DAP&T Pool Accommodation in Kaka Nagar and Moti Bagh, respectively. The contention of the learned counsel for the respondents is that the allotment of Jagdish Lal Dhamija was cancelled w.e.f. 16.7.1980 and he finally vacated the quarter in October, 1982. However, on compassionate grounds, because of the death of his wife in September, 1982, considered the refund of the excess of the normal licence fee charged from Shri Dhamija. As regards the case of Shri Kanad Bhattacharya, he was allotted

AGP&T Pool quarter in November, 1959, when the Headquarters of the AGP&T was in Simla. He was subsequently taken on deputation to the office of the AGP&T as an Auditor. On his promotion to the post of Section Officer, he was transferred to P&T Audit Office on 24th April, 1991. Therefore, his allotment was cancelled and he was allowed to retain the accommodation till 23rd January, 1982. However, on his representation, he was allowed to retain the quarter on normal licence fee until he got an alternative accommodation from the General Pool. Later on, he was again taken back on deputation to the Office of DAP&T, Delhi. The learned counsel for the respondents, therefore, pointed out that Shri S.C. Bose was allotted quarter in 1974 and Shri Mattoo in 1976 and as such, the cases cited by the applicants in their applications, are not similar to the case of the applicants.

11. As regards reference to the cases of Smt. Anjana Dass and Shri V. Mohan, they belong to the Indian Audit & Accounts Service and since these quarters were available, one of them was allotted to Smt. Anjana Das and the other to Shri V. Mohan, Director, Branch Audit Office, Delhi after relaxation in the Allotment Rules was granted by the C&AG of India, who is the competent authority for

such purpose under the Allotment Rules. Thus, both of these officers had not been allotted the DAP&T Pool accommodation in conformity with the policy of 1968, or July, 1974. I have considered all these aspects and do find that the applicants have not established that their case is at par with those staff members cited in their respective applications and referred to during the course of the arguments. The learned counsel for the applicants has also cited certain instances where certain staff members of the Office of the Principal, DAP&T, even after their transfer to the aforesaid Pool from the office where they were eligible for General Pool accommodation, continued to occupy the General Pool accommodation and did not vacate the same. On this analogy, the learned counsel stressed the argument that the applicants are also entitled to retain DAP&T Pool accommodation, irrespective of their transfer to an office where they are eligible only to a quarter from the General Pool under the Directorate of Estates. This argument is totally fallacious. The respondents have taken the stand that on transfer from their office, the staff members cannot be accommodated any further beyond the prescribed period and by virtue of the allotment rules, the allotment in their name stands cancelled. The applicants in both the applications in para.4.8, have clearly admitted "that the employees in the Posts & Telecommunications Office, Delhi, are entitled to General Pool accommoda-

tion and are not entitled to the Departmental Pool accommodation." In view of this fact, the applicants cannot have any case on the basis of certain analogies offered in the original application by citing examples.

I am convinced that the stand taken by the respondents is totally justified in the sense that a limited number of quarters are available in the Pool of the DAP&T for accommodating their own staff and since the permanent cadre of the Auditor has been abolished and only the staff is taken on deputation, the respondents have to provide accommodation to such staff members. Unless and until those who are posted out of DAP&T Office and their quarters are got vacated, the others who joined on deputation, cannot be accommodated. The policy decision of February, 1968 and C&AG letter of November, 1974, as pointed out earlier, has no relevance to the case of the applicants.

12. In view of the above facts, the applicants have no case to retain the quarters allotted to them of the DAP&T Pool and they have to vacate the same on their transfer to the Audit Office, Posts & Telecommunications, Delhi.

13. The applicants have since been sanctioned by the letter dated 5.12.1991, General Pool accommodation. This sanction has been irrespective of the locality and floor.

Normally, this ad hoc allotment should have been within a period of six months from the date of sanction, but generally, a type below is allotted and in this case, it was Type II or 'B'. It is obvious that the applicants did not take any interest in pursuing the matter with the Directorate of Estates. Moreover, though this application has been filed much after the sanction of the General Pool accommodation in the names of the applicants, yet they have not prayed for enforcement of this order against the Directorate of Estates. It goes to show that the applicants, in spite of having pre-emptory knowledge that they shall not be entitled to accommodation from the DAP&T Pool, even ~~in~~ pursued efforts to retain the allotted quarters in their names. The respondents have issued show-cause notice on 20.7.1992 and ultimately informed the applicants on 31.7.1992 to vacate the privilege, otherwise face eviction proceedings. The conduct of bot the applicants has been ^{unfair} ~~for~~ ^{October,} in November, 1990 and again in November, 1990, a request was made by them to retain these quarters for a definite period. Even after the expiry of the period for which the request was made for retention, the applicants did not vacate the premises and ultimately filed the present application. The applicants, by their own conduct, gave a representation to the respondents to vacate the said premises, but

subsequently, resiled on the same and filed the present applications in the Tribunal in August, 1992. The applicants undertook to vacate the premises by 31st August, 1992 and now they are continuing under the orders of the Tribunal passed on 28th August, 1992 in the aforesaid premises. The applicants have no case to retain these premises allotted to them while they were working in the office of respondent No. 2 and on being transferred to AGP&T Audit Office, Delhi, have no right to retain the same and they have been already sanctioned a Type II/B quarter from the General Pool. So, they have to shift to those quarters when the same are earmarked for them. The applicants have not given consent on the sanction of Type II/B quarters in their names by the Directorate of Estates from the General Pool as there is nothing on record to show that the applicants pursued their matters.

14. In view of the above facts and circumstances, I find no merit in the present applications/as regards the retention of the quarters allotted to them while they were working in the office of Principal Director of Audit, P & T and the applicants are not in authorised occupation of the same after their transfer to the P&T Audit Office, Delhi. However, as regards the rent/damages for unauthorised occupation, it is held that the respondents can proceed

under P.P.E. Act, 1971 but since the alternative accommodation was sanctioned in the name of the applicants in December, 1991, no rent at damage rates, i.e., only licence fee shall be charged upto that date. From January, 1992, the retention of the quarter by the applicants is totally unauthorised as they had already been sanctioned an accommodation by the General Pool by an order dated 5.12.1991. The respondents, therefore, can recover under the P.P.E. Act, 1971 damages as per the extant rules. If any amount has been recovered from the applicants in excess of the normal licence fee for the period upto December, 1991, that shall be liable to be adjusted in the subsequent months till the vacation of the quarters by the applicants. The other reliefs claimed by the applicants are disallowed. The parties to bear their own costs. A copy of the judgment be placed in the other file.

22.7.93
(J.P. Sharma)
Member (J)