

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.2341 of 1992 decided on 19.5.1997.

Shri Ganesh Chand

...Applicant.

(By advocate; Shri B. Krishan)

Versus

Union of India & ors.

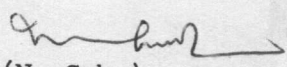
...Respondents.

(By advocate: ~~None~~ ? Khurana)

Coram

Hon'ble Mr N. Sahu, Member (A)

1. To be referred to the Reporter or not ? YES
2. Whether to be circulated to other benches of the Tribunal? ~~NO~~


(N. Sahu)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2341/92

New Delhi this the 19th day of May 1997.

Hon'ble Mr. N. Sahu, Member (A)

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Shri Ganesh Chand
S/o Shri Nathu Ram
Working as Spray Painter in the
Directorate of Advertising and
Visual Publicity,
Ministry of Information & Broadcasting
New DelhiApplicant

(By Advocate : Shri B. Krishan)

Versus

1. Union of India
through
The Director of Estates
Directorate of Estates
'C' Wing, Nirman Bhawan,
New Delhi-110 011
2. The General Manager
Delhi Milk Scheme
Ministry of Agriculture
West Patel Nagar
New Delhi - 110 008.Respondents

(By Advocate : ~~None~~ P. Sharma)

ORDER (ORAL)

Hon'ble Mr. N.Sahu, Member(A)

In this O.A. filed under Section 19 of the Central Administrative Tribunal Act on 07.09.1992, the applicant seeks a direction for an alternative accommodation of Type 'B' on out of turn basis to enable him to vacate the quarter belonging to Delhi Milk Scheme pool and for a direction to allow the applicant to retain the residence bearing No.25/351, DMS Staff Colony, Hari Nagar, New Delhi on payment of normal rate of licence fee till such time the applicant is allotted an alternative accommodation. An interim order was passed on 10.09.1992 directing the respondents not to dispossess the applicant from the quarter No.25/351, DMS Staff

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Colony, Hari Nagar, New Delhi and not to recover the damages from him. This interim order continued as the respondents did not file any objection against the same.

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2. The background facts in this case are that the applicant was declared surplus by an order dated 29.03.1990. His name was sponsored to Surplus Cell, Department of Personnel & Training, New Delhi. On the same day, namely, 29.03.1990 he was offered the post of Spray Painter in the Directorate of Advertising & Visual Publicity, Ministry of Information and Broadcasting. He was relieved from Delhi Milk Scheme on 24.04.1991. Respondent No.2, the General Manager, DMS directed the applicant to vacate the allotted residence by 23.11.1991 failing which he would be liable for damage rent at the rate of Rs.1,780/- per month from 25.11.1991. On 13.11.1991 the applicant applied to Respondent No.1, Director of Estates for allotment of alternative accommodation of his entitled type. Subsequently, it is stated that after a prolonged delay in the middle of 1994 the applicant was allotted quarter No.647, Sector 4, Timar Pur, Delhi. This is the information supplied at the bar by the learned counsel for the applicant. Meanwhile, Respondent No.1 threatened to deduct from the applicant's salary, damages at the rate of Rs.1,780/- per month.

3. The learned counsel for the applicant stated that he was not a defaulter in any manner. He was awaiting allotment of accommodation and the moment the said accommodation was available to him in the

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middle of 1994, he vacated the DMS accommodation. He cited the decisions of Shri Jairam Yadav versus Union of India in OA 1963/91 followed by Shri Ram Kumar versus Union of India in OA 577/92 and pleaded that the ratio decidendi in the above cases may be applied to the present case of applicant as well. Particularly, in Ram Kumar's case this Tribunal directed Respondent No.1 to allot alternative accommodation by the judgement dated 01.05.1992 in OA 577/92 (cited supra). Besides, questioning the authority of law under which the damages were proposed to be charged at the rate of Rs.1,780/- per month, the learned counsel also stated that the Respondent No.2 is not competent to make deduction of such damages from the applicant's salary. Learned counsel for the applicant cited further, the decision of this Bench in the case of Suresh Prasad versus Union of India wherein on similar facts vis-a-vis the DMS, this Tribunal passed an order that Respondent No.2 shall not evict the applicant from the DMS quarter and also directed that normal licence fee shall only be recovered. There was also a direction to allot to the applicant on the first available vacancy quarter of the eligible type from the general pool. Finally, learned counsel referred to the decision of the Hon'ble Supreme Court (Supreme Court 1995 Supplement (3) SCC page 141) in S.C. Bose versus C.A.G. dated February 20, 1995. In that case also allottees of government accommodation in departmental pool became disentitled to such accommodation on transfer and entitled to accommodation of general pool. In the absence of allotment of accommodation from general pool those persons continued to stay in the

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accommodation in the departmental pool. Under those circumstances, the Appex Court ruled that recovery of penal rent and damages for continued occupation of the accommodation in the departmental pool was unjustified.

4. Shri P. P. Khurana was authorised to appear on behalf of the Respondents who, as mentioned at the bar, is no longer in the panel as Govt. Counsel. No other counsel appears today. There is no mention on behalf of the respondents. This being a 1992 matter, it will not be possible to defer the hearing in this old case. I, therefore, dispose of this O.A. on the basis of the averments made in the counter reply filed by both the respondents.

5. In the counter affidavit the respondents tried to justify the proposed eviction of the applicant on the ground that it is an essential service and therefore, continued retention of the quarter deprived other deserving categories from proper accommodation. As DMS quarters are under direct control of DMS Management, they are empowered to recover damage charges. The reply of the Directorate of Estates for allotment of alternative general pool accommodation is that the applicant is not entitled to such allotment. First of all, the applicant is protected by stay of the Tribunal from time to time prohibiting collection of damages and secondly, learned counsel for the applicant has shown a number of authorities wherein DMS is a party. Under similar circumstances, this Tribunal directed that only normal licence fee will be collected till

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alternative accommodation is allotted to the employee declared surplus. This point is now fairly well settled by the Hon'ble Supreme Court's decision in S.C. Bose versus C.A.G. (supra.). The facts in S.C. Bose's case are similar to the facts in this case with the difference that in that case the transfers are from one Govt. department to another and here transfer is from DMS to Directorate of Advertising & Visual Publicity, Ministry of Information and Broadcasting through the Surplus Cell. Yet the principles laid-down in the above Supreme Court's decision squarely apply. Relief No.1 here has become academic as applicant had been allotted alternative accommodation by Directorate of Estates. With regard to relief No.2, Respondent No.1 is directed to charge and collect only normal rate of licence fee from 24.04.1991, the date on which the applicant was declared surplus and was no longer an employee of DMS till the date in the middle of 1994 when he vacated the DMS quarter after securing general pool accommodation. With regard to relief No.3, the Respondents shall not charge any damage, market rent or penal rent in respect of the DMS accommodation occupied by the applicant. O.A. is allowed. No Costs.

N. Sahu
(N. SAHU)
Member(A)
19/5/97.

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