

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
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D.A. NO.2613/92

Date of Decision : 26.02.1993

Smt.Usha Joshi & Anr.

...Applicants

Vs.

Union of India & Anr.

...Respondents

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

Hon'ble Shri S.R. Adige, Member (A)

For the Applicants

...Shri B.Krishan, counsel

For the Respondents

...Shri P.P.Khurana, counsel

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

JUDGEMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J))

Applicant No.2, Shri R.N. Joshi is the husband of applicant No.1, who is posted as Section Officer in Directorate of Economic and Statistics, Ministry of Agriculture. She has the grievance that her request for regularisation of Government quarter No.A-40 Pandara Road, New Delhi after retirement of her husband on 31.8.1989 which was earlier allotted to her husband while he was serving as Registrar of Hon'ble Supreme Court, New Delhi has not been favourably considered. She was also sharing accommodation with her husband and was not also claiming HRA. She is also aggrieved by an order of eviction passed against her husband regarding the said premises No.A-40 Pandara Road and having appealed against that order of eviction to the District Court, the matter has again been remanded to the Directorate of Estates for decision afresh. That matter is still

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pending. A letter of remand dt.29.4.1991 has also been served on applicant No.2 for realisation at the panel rate of rent/licence fee of the aforesaid premises.

2. In the present application under Section 19 of the Administrative Tribunals Act, 1985, the applicants have prayed for the grant of the following reliefs :-

- (a) The allotment in respect of Government Quarter No.A -40, Pandara Road, New Delhi may please be directed to be regularised in favour of the applicant No.1 from the date of cancellation in the name of the applicant No.2.
- (b) The applicants may not be made liable to pay any sort of market rent/damages/penal rent in respect of the premises at Pandara Road, New Delhi.
- (c) The eviction proceedings in respect of premises No.A-40, Pandara Road, New Delhi may be quashed.
- (d) Such other order as this Hon'ble Tribunal may deem fit and proper may also be passed. The applicant is ready and willing to surrender the quarter No.Sector-IV/709, R.K. Puram, New Delhi.

3. The respondents did not file any reply, but the learned counsel for the respondents, Shri P.P.Khurana appeared at the time of hearing of the matter and the matter is disposed of finally at the admission stage with the consent of the parties.

4. The contention of the learned counsel for the applicants is that the aforesaid premises No.A-40 Pandara Road should have been regularised in favour of applicant No.1, but the contention of the counsel is without any force because the allotment of accommodation to the Government servant lasts till he retires from

service on superannuation or otherwise and a particular period of four months is provided for further retention of Government premises after which retiree Government servant is to vacate. Applicant No.2 retired on 31.8.1989. So he should have vacated the premises by 31.12.1989. Applicant No.2 applied for a further period of four months for retention of this accommodation which was rejected by the letter dt.10.1.1990. He was further asked to vacate the said premises otherwise action shall be taken against him for eviction under Public Premises (Eviction of Unauthorised Occupants) Act, 1971. He was also informed that he shall be liable to pay damages under SR-317 B-22 for the period of overstay. However, the learned counsel for the applicants contended that since wife-applicant No.1 was sharing accommodation and not realising HRA, so the respondents should have regularised the accommodation in favour of applicant No.1 under OM No.12035/(7)/79 POL-II dt.1.5.1981. In fact the provision of that OM does not apply to the case of the applicant because applicant No.1 was not eligible for the allotment of type of accommodation occupied by the husband as her emoluments on the date of retirement were less than Rs.2800 and only those who are getting basic pay of not less than Rs.2800 are entitled to that type of accommodation. Applicant No.1 came in that scale w.e.f. 1.11.1990. So the question of regularisation of the aforesaid type of accommodation which was allotted to her husband, does not arise as per the extant Rules.

5. There is another factor also that applicant No.2 owns his own house in Delhi and the circular of 1981 (supra) excludes regularisation of the quarter in favour of ward or dependent or sharer of that accommodation. Thus the question of regularisation of quarter No.A-40 Pandara Read in favour of applicant No.1 does not arise.

6. The learned counsel for the applicants also argued that in one another case, the respondents have regularised a similar quarter in Pandara Read, but that cannot be taken as a good example and cannot be said to be in any way discriminatory to the case of the applicant because applicant No.2 possesses his own house in Delhi. The learned counsel for the applicants has also assailed the grievance of issue of a remand notice for realisation of penal rate of rent and as per provisions of SR 317.B/22 for the period of overstay. Here the letter dt.10.1.1990 (Annexure A1) issued by the Directorate of Estates clearly goes to show that the applicant is occupying premises in an unauthorised manner and so he shall be liable to be evicted and panel rate of rent could be charged. In such an eventuality, the applicants should not have any grievance. They are educated officers and must know the extant Rules which apply to them. The learned counsel for the applicants also argued that the proceedings are still pending before the Directorate of Estates regarding eviction after the remand order passed by the Additional District Judge, Delhi dt.12.8.1991 quashing the eviction order dt.21.8.1990 passed earlier by the Director of Estates. The pendency of that order has nothing to do for the reliefs, the applicants are

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claiming in the present OA. The applicants cannot simultaneously proceed awaiting the grant of reliefs by the Department and also claiming the reliefs in the present application. In fact applicant No.1 is still in service and applicant No.2 has retired. However, the pending proceedings can continue and cannot be stayed with the liberty to the applicant to contest the same as per extant Rules under Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The applicants should not have any grudge on that account because the allotment in favour of applicant No.2 has been cancelled or shall be deemed to have been cancelled w.e.f. 1.1.1990 and already a Memo was issued to applicant No.2 dt.10.1.1990 to vacate the said premises or face the penal consequences of damage and eviction under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 as well as under SR-317 B-22 which govern the conditions of allotment of applicant No.2. The learned counsel for the applicants also argued that during the pendency of proceedings before the Estate Officer for eviction, applicant No.1 has been allotted a residence in R.K.Puram, Quarter No.709 Sector-IV on 14.7.1992 on the basis of her own seniority. Applicant No.1 on 6.8.1992 made a request for change of that accommodation allotted to applicant No.1 in her own capacity with that of the accommodation allotted to her husband at A-40 Pandara Road, but the respondents have not considered the request favourably. Firstly, the applicant though opted to shift to that accommodation in R.K. Puram has not shifted to the same and secondly, the

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applicant No.1 is still insisting that she could be allowed to retain the Pandara Road accommodation allotted to her husband. Unless the applicant vacates the Pandara Road accommodation and shifts bag and baggage to R.K. Puram accommodation allotted to applicant No.1, no case for change of accommodation arises. The argument of the learned counsel for the applicants appears to be totally misconceived in this aspect. The learned counsel for the applicants could not show any rule or precedent that any such practice exists where without shifting to an allotted premises, a request for change of that premises can be made even retaining the earlier allotted premises to a retiree in an unauthorised manner.

7. We have considered the aspect of the case from every angle and find that the grievance of the applicants is totally unjustified and the reliefs claimed in this application cannot be granted. The application is, therefore, dismissed as devoid of merit leaving the parties to bear their own costs.

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S.R. ADJGE)
MEMBER (A)

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(J.P. SHARMA
MEMBER (J)