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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
* * *

OA 308/92

08.09.1992

Shri K.C. Aggarwal

...Applicant

VS.

Union of India & Ors.

...Respondents

CORAM :

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

For the Applicant

...Shri R.C. Aggarwal

For the Respondents

...Shri J.C. Madan, proxy
counsel for
Shri P.P. Khurana

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

JUDGEMENT (ORAL)

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

The applicant, Shri K.C. Aggarwal is Extra Assistant Director in Central Water Commission, Gates Designe(North and West) Directorate, since April, 1978. The applicant was transferred by respondent No.3 on 17.5.1988 from New Delhi to Shillong in the Meghana Investigation Sub Division No.1 and was relieved of the present posting on 16.8.1988. During the course of his posting at Delhi, the applicant was in occupation of an allotted premises No.F-67 Nauroji Nagar, New Delhi. The applicant joined on the place of transfer on 20.8.1988. Thereafter on 23.8.1988, the applicant move for the retention/alternative Government accommodation in the prescribed proforma through proper channel for the bonafide

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requirement of the family to stay back at Delhi as the members of the family did not accompany the applicant due to certain family circumstances. The applicant continued to work at the place of posting in Shillong and the family, during this period, remained in the premises allotted to the applicant at Delhi.

The posting in North Eastern region has given certain incentive to Central Government employees in the form of special allowances as well as regarding the retention of general pool accommodation/allotment of alternative general pool accommodation at the formal place of posting. OM No.20014/3/83-E.IV dt. 14.12.1983 issued orders in that respect. Clause (d) of that order at p-36 of the paper book lays down, "The request for retention of accommodation of alternative accommodation should reach the Directorate of Estates within one month of his relinquishment of the charge at the last station of posting." There is another OM of the Ministry of Urban Development dt. 26.3.1987 in the same regard. There is another OM extending these facilities of the OM of 1988 till January, 1989 and a photocopy of the same has been filed as Annexure P22 at p-99. A cumulative reading of these OM goes to show that if a Central Government employee is in occupation of a Central Government pool accommodation and is transferred to North Eastern region, then he may retain the allotted premises even on his transfer subject to his moving an application through the department for retention/allotment of alternative accommodation of a type below for keeping his

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family at the ~~formal~~ station. The applicant has annexed the photocopy of the applications submitted to the respondents through proper channel with the forwarding note of the department in which he was serving (Annexures P3 and P4 to the application). The respondents in their counter in para-5 have admitted the receipt of these applications. Respondent No.2, therefore, has to comply with the own instructions issued from time to time. It appears tht respondent No.2 went into hibernation and ^{awoke} in March, 1991 by serving a notice to the applicant calling upon him that his allotment stood cancelled two months after the transfer, i.e., w.e.f. 16.10.1988 and asking him to vacate the said premises and to face proceedings under the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1980. The applicant, however, arrived on his retransfer to Delhi in May, 1991. The applicant applied for a higher type of accommodation for which he was eligible. Respondent No.2 regularised the same accommodation by the order dt. 17.9.1991 and also allotted him another accommodation of Type B quarter No.B 16 M.B. Road, and called for his acceptance in that regard. The applicant gave an acceptance on 23.9.1991 averring in the application, "Technical Acceptance" and also undertook to pay the difference of rent of Type C and Type ~~D~~ accommodations. The applicant has not since occupied that Type ~~D~~ accommodation as he has desired that type accommodation in the vicinity of the place he has been residing. The grievance of the applicant is

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that he cannot be forced with an order dt. 7.3.1991 cancelling his earlier allotment of Type-III accommodation and also assail the order dt. 30.9.1991 by which respondent No.2 has assessed the damages amounting to Rs.33414 till July, 1991 with a further liability to pay for further retention of the quarter @ Rs.1760 p.m.

The issue involved, therefore, for adjudication is whether the respondents are justified in cancelling the allotment by the order dt. 7.3.1991 and further levying damages at certain rates by the Memo dt. 30.9.1991?

I have heard the learned counsel for both the parties. Firstly, the counter filed by the respondents runs only in two pages and most of the paragraphs in which averment has been made in the OA have not been specifically denied, particularly paras 1 to 4 and 6 to 10 of the OA. The respondents have only given reply to para 5 and in para-1 to paragraphs 11 and 12 and in the last paragraph to paragraphs f13 to 32. Going through the counter, it appears that Shri B.B. Singh, who has filed the reply has admitted receipt of the applications sent by the applicant in August and September, 1988. As per the OM, referred to above, for retention of the allotted premises/alternative allotment of accommodation of type below, and Since this application was moved by the applicant well within time as has been laid down in the aforesaid OM of Directorate of Estates of 1983, 1984 and 1988 and the life of the OM still continues on the date of the transfer of the

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applicant to Shillong and still continues till 30.08.1993, so the respondents themselves are at fault in not passing any specific order and not considering the prayer made by the applicant in the application for retention of the accommodation at the former station of posting. In such a situation, the applicant cannot be punished by an order of cancellation passed in March, 1991 having its effect retrospectively from October, 1988. This is totally against the aforesaid OM as well as against the principles of natural justice, equality and fair play. A person cannot be condemned retrospectively.

When once the cancellation order dt. 7.3.1991 is found to be totally violative of the OM issued by the Ministry of Urban Development, Directorate of Estates, the same is ineffective and any such order cannot be given any sanctity. The impugned order dt. 7/12.3.1991 is, therefore, held to be illegal.

In fact, the applicant by virtue of retaining the premises at Delhi is bound to pay one and a half times licence fee during the retention of the quarter till the date of his return on reposting to Delhi. The impugned Memo of September, 1991 appears to have been made on the basis of a person in unauthorised occupation of the accommodation when the allotment in favour of the applicant still has been held to be good, so the damages cannot be levied in the manner showed in the impugned Memo dt. 30.9.1991. The applicant has only to

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pay one and a half times of the licence fee for the said quarter till the date of his return to Delhi on 13.5.1991.

In view of the above facts, this levying of damages by the Directorate of Estates is totally uncalled for and unjustified and this impugned order is also held to be not sustainable.

The last grievance of the applicant is that he has not been allotted an eligible type of quarter, i.e., Type-IV. However, for this, the applicant when he was allotted a Type-D quarter, has not given acceptance in clear terms and he was satisfied by modifying the acceptance by the word 'technical' which to my mind does not create any sort of acceptance except reserving a right to himself in time to resile from that acceptance if the premises are not of his choice. That is also evident from his conduct because he wanted Type -IV accommodation not in M.B. Road, but in the vicinity of Nauroji Maqar where he has already been occupying the present accommodation of Type-III. For this, the respondent No.2 cannot be defaulted. However, the respondents cannot realise the licence fee for Type-D quarter since the same as given out by the learned counsel, during the course of the arguments, has been allotted to some other employee.

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In view of the above facts, the application is disposed of in the following manner :-

- (a) The orders of cancellation as well as imposition of damages dt. 7/12.3.1991 and 13.9.1991 are quashed and set aside. The quarter No.F-67 Nauroji Nagar shall stand regularised in the name of the applicant and since 13.5.1991, the respondents shall recover only the licence fee as is payable for such type of accommodation under the Extant Rules.
- (b) That the respondents on the availability of vacancy irrespective of the location will allot the applicant an eligible Type-IV quarter on his turn.
- (c) The applicant shall be liable to pay the licence fee/rent for the occupied premises F-67 Nauroji Nagar at the rate of one and a half times of the normal licence fee for the period he was posted in North East region and if the same has already been paid, then that shall stand off against him. Any amount paid in excess shall be liable to be refunded to the applicant.
- (d) The respondents shall comply with the above directions within a period of three months from

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the date of receipt of a copy of this order. No time limit is fixed for the allotment of Type-IV quarter, which shall be allotted on the turn of the applicant taking into account his refusal of the quarter of Type-B on M.B. Road.

- (e) In the circumstances, the parties shall bear their own costs.

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(J.P. SHARMA)
MEMBER (J)
08.09.1992