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In the Central Administrative Tribunal
Principal Bench, New Delhi

OA-3342/92

Date:

13.8.92

Shri O.P. Saini

.... Applicant

Versus

Union of India

.... Respondents

For the Applicant

.... Shri B. Krishnan, Advocate

For the Respondents

.... Shri N.S. Mehta, Advocate

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

1. To be reported to the Reporters or not?

Single Bench Judgement

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

The applicant is working as Assistant in the Department of Personnel & Training, Ministry of Home Affairs. He has been served with an Office Order dated 2.7.1992 by which he was transferred from earlier posting in the Institute of Secretariat Training and Management (ISTM) to the Ministry of Home Affairs (M.H.A.). The applicant joined there. He is further aggrieved by the cancellation of allotment of Government accommodation No.161, Old J.N.U. Campus by the letter dated 25.8.1992 and also by the O.M. dated 6.11.92 declaring the applicant as an unauthorised occupant of the aforesaid allotted premises, directing the recovery of damages at the rate of Rs.2,600/- per month. He is also aggrieved by non-allotment of an alternative accommodation

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by Respondent No.3, the Directorate of Estates, for which the applicant has applied by his application dated 31.8.92.

2. The applicant has prayed for the grant of the following reliefs:-

- (a) Quashing of the order of cancellation of allotment dated 25th August, 1992 and O.M. dated 6.11.1992 with the direction to allow him to continue in the premises No.161, Old JNU Campus, New Delhi, on payment of normal licence fee, or a direction to the respondent No.3, i.e., Director of Estates, to allot an alternative accommodation to the applicant in lieu of the present one in his occupation.
- (b) He has also prayed that penal rent/market rent/damages in respect of the present accommodation No.161, Old JNU Campus, may not be charged from him and in the alternative, the applicant may be posted back to ISTM in order to continue in the said accommodation.

3. The applicant is working under the Central Govt., Delhi since 16.6.1971. He joined ISTM as U.D.C. on 7.3.84. He was promoted on ad hoc basis as Assistant and posted to N.C.R.B. by the Ministry of Home Affairs, but was accommodated in the ISTM in the grade of ad hoc Assistant w.e.f. 1.6.1989. He was taken on the strength of the Ministry of Programme

Implementation w.e.f. 19.12.1989. From there, he was sent on deputation to the Cabinet Secretariat (S.P.G.). He joined the ISTM on 1.6.1991, which was a routine posting against the post of Assistant in the ISTM. While the applicant was posted as such by the order dated 3.1.92, he was allotted Type III Quarter No.161, from the ISTM Pool on a purely temporary basis for a period of one year subject to renewal by the Institute in the light of applicable priorities. There was a condition that the officer will ^{be} vacate the accommodation on the date of completion of his tenure in the Institute, or in the event of another officer discharging functional duties applying for accommodation, or one year from the date of the allotment, whichever is earlier. By the letter dated 29.5.1992 (Annexure A-II), issued by the Deputy Director (Admn.), ISTM, relieving the applicant of the services of the Institute w.e.f. 5.6.1992, he was also granted 60 days' E.L. w.e.f. 8.6.1992. By the order dated 2.7.1992, the applicant as ad hoc Assistant was directed to report for duty to I.P. Section, M.H.A. for further posting. By the order of 3rd July, 1992 issued by the M.H.A., the applicant was posted as ad hoc Assistant in the Department of Personnel & Training w.e.f. 3.7.1992. In view of the applicant having been relieved from ISTM by the memo. dated 25.8.1992, since he was transferred to an ineligible office, the allotment

of residential accommodation from ISTM Pool, Quarter No.161, was cancelled w.e.f. 2.9.1992 after taking into account the concessional period permissible under the rules. He was also informed that in case he did not vacate the premises, he would be liable to pay damages at the rate of Rs.40/- per square meter per month of the living area or at such higher rate as may be prescribed and action may also be taken under Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1980. The applicant has applied to the Directorate of Estates by his application dated 31.8.1992 that if Type III Quarter is not considered for allotment, a Type II quarter may be allotted to him under one type below rule. He also made a request for retention of Quarter No.161 of ISTM Pool which was rejected by the order dated 2.9.1992. Since he did not vacate, a recovery of Rs.2600/- per month w.e.f. 3.9.1992, was ordered to be effected from his salary without prejudice to the right of eviction/disciplinary action to be initiated against him. The applicant made a representation on 21.12.1992, but to no avail and without awaiting the result of his representation, the present application has been filed on 24.12.1992 and an interim relief was granted to the applicant that recovery of damage rate of rent from the applicant be deferred and that interim order ^{be} continued till the date of hearing.

4. The respondents contested the application and stated that ISTM Pool Accommodation was created with a specific

purpose and the accommodation is to be allotted to the officers and staff of the Institute primarily on functional basis. Though the applicant was not holding any post qualifying the priority allotment, yet at the relevant time, some of the officers/staff holding the designated post, happened to have alternative accommodation and, therefore, had no need for ISTM Pool accommodation. In view of this, the applicant was allotted accommodation purely on temporary basis and subject to the condition of the allotment order issued in his favour on 3.1.1992. Regarding the continuance of Shri Mukhopadhyay after the expiry of the period of deputation as Assistant, it is stated that he was functioning as a Trainee Associate and was associated with the ISTM for quite a long time. In view of this, it was proposed to retain Shri Mukhopadhyay and to transfer the applicant out of ISTM who was holding only a non-priority post. Thus, according to the respondents, the applicant has no case to retain the ISTM Pool accommodation. It is further stated that the applicant is much below in the date of priority for allotment of accommodation from the General Pool of the Directorate of Estates. No rejoinder has been filed by the applicant to the counter filed by the respondents. Respondent No.3 has not filed any counter.

5. I have heard the learned counsel for the applicant at length and perused the records. The applicant is bound

by the terms and conditions of allotment by the order dated 3.1.1992. The learned counsel for the applicant has emphasised the condition No.III of the said letter (Annexure R-V) where it is written that whenever an officer gets accommodation from the Directorate of Estates, he would be required to vacate the accommodation immediately. However, this condition by itself does not negate the other conditions which specifically lay down the terms and conditions of allotment, i.e., that allotment is for one year and even it may lapse earlier on completion of the tenure of the applicant in the Institute or another officer discharging functional duties applies for accommodation. Thus, this issue should not detain us for further probe into the matter. It is not disputed that the accommodation in occupation of the applicant belongs to the ISTM Pool, as is evident by the O.M. of the Ministry of Personnel, Public Grievances and Pensions dated 7.11.1990 (Annexure R-1). This is ~~not~~ further substantiated by the letter dated 14.11.1991 (Annexure R-III) issued by the Deputy Director(A), ISTM, to the Director of Estates. This letter also shows that the quarters are to be allotted to the faculty members and staff members primarily on functional basis. It is further stated that all the other officers/staff who were allotted these quarters, will vacate them when they hand over charge of their respective posts. The contention of

the learned counsel for the applicant that he is ~~not~~^{is} entitled to alternative accommodation of a type below, cannot be accepted as there are no such rules referred to in the application, nor were referred to during the course of the arguments. Merely because there may be some reciprocal arrangement between the different organisations of the Central Government who deal with the Pool accommodation and concerning such staff who on transfer become ineligible for retention of the Pool accommodation, have to be provided accommodation from the General Pool by the Directorate of Estates. It is not the case of the applicant that prior to joining the ISTM, he was having a General Pool accommodation in his possession on the basis of the date of priority of joining service in the Central Government. Against this, in the counter in para.4.25, it is stated that the applicant is much below in the date of priority for allotment of accommodation from the General Pool of the Directorate of Estates. Thus, the applicant has no case for retention of the ISTM Pool accommodation which was purely allotted to him as a temporary measure while his services were required in the Institute. The order of cancellation of allotment, therefore, cannot be found fault with.

6. Regarding retention of Shri Mukhopadhyay after the expiry of the period of deputation in the Institute, the applicant cannot enforce his right to work in the Institute

because he was holding a non-priority post. The case of Shri Mukhopadhyay is different because he was functioning as a Trainee Associate and was associated with the ISTM for quite a long time. It was for the Institute itself to consider as to which of the staff member is best suited for efficient discharge of the functions of the Institute. The applicant cannot challenge his transfer or request that he may be allowed re-posting in ISTM. He joined the M.H.A. and was promoted in due course as U.D.C. and as ad hoc Assistant and was posted initially to NCRB by the M.H.A. However, he was accommodated in ISTM in the cadre of Assistants on ad hoc basis. The respondents have clearly stated that ISTM is not a subordinate office of the M.H.A. It is further stated that ISTM is an attached office of the Ministry of Personnel, Public Grievances and Pensions. The applicant had also been posted to the Ministry of Programme Implementation and was sent on deputation to the Cabinet Secretariat (S.P.G.). Thus, the retention of Shri Mukhopadhyay cannot be challenged by the applicant.

7. The learned counsel for the applicant has referred to a decision of Jai Ram Yadav Vs. Union of India decided by the Principal Bench on 18.11.1991. The facts of that case are totally different. The applicant in that case was a Junior Engineer who was working in the C.P.W.D., 'E' Wing. He was allotted accommodation from the General

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Pool. He had gone on deputation and so, was directed to vacate the premises allotted to him and obtain residential accommodation from the Pool of Delhi Administration. In the present case, the applicant is bound by the terms and conditions of allotment and his tenure was fixed, which he already knew before occupying the allotted premises. In view of this, the applicant has no case.

8. Regarding the levying of damages against the applicant, the respondents should have issued a show-cause notice and proceeded under the Public Premises (Eviction of Unauthorised Occupation) Amended Act, 1980. Thus, the order of levying damages without giving an opportunity, is against the principle of natural justice. Further, the allotment order dated 3.1.1992, nowhere mentions that in the event of overstay, the applicant shall be liable to pay damage rent. It is only mentioned that regarding other matters, he will have to abide by the rules prescribed by the Directorate of Estates for General Pool accommodation. In view of this, the respondents are at liberty to pursue the matter under the Public Premises (Eviction of Unauthorised Occupants) Amended Act, 1980. In fact, the memo. of 25th August, 1992 also gave notice to the applicant in that regard. When there is a provision under statutory rule ^{than} / ~~that~~ the same has to be followed and the administrative instructions, if any, cannot supersede that. Thus, in view

of this, the levy of damage rent without giving show-cause notice, is arbitrary and also not according to law.

9. The present application, therefore, is partly allowed only to the extent that the respondents' O.M. dated 6.11.1992 for recovery of Rs.2,600/- p.m. from the salary of the applicant w.e.f. 3.9.1992, is quashed with the liberty to the respondents to pursue the matter for realisation of damage rent, etc., under the provisions of Public Premises (Eviction of Unauthorised Occupants)(1971 as) Amended Act, 1980.

10. The order of cancellation of allotment is not interfered with and the relief in that regard is disallowed.

11. The relief with regard to the reposting of the applicant to I.S.T.M. is also disallowed.

12. Respondent No.3, the Directorate of Estates, may consider the application of the applicant dated 31.8.1992 for allotment of an eligible type of accommodation as per priority on the basis of seniority in his service in the M.H.A. and dispose of his application within a period of three months from the date of receipt of the order. There will be no order as to costs.

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(J.P. Sharma) 13/8/92
Member(J)