

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



Date of Decision: 24.04.92

DA 45/92

RAKESH KUMAR SHARMA

... APPLICANT.

Vs.

Sh. B.M. ARORA,
DIRECTOR,
NATIONAL ZOOLOGICAL PARK,
NEW DELHI.

... RESPONDENT.

For the Applicant

... Shri C.M. Khan,
Counsel.

For the Respondent

... Shri M.K. Gupta with
Shri V.S.R. Krishna,
Counsel.

CORAM:

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

1. Whether Reporters of local papers may be allowed to see the judgement? *y*
2. To be referred to the Reporters or not ? *y*

JUDGEMENT

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

The applicant, Laboratory Assistant, National Zoological Park, New Delhi is aggrieved by the order of cancellation of allotment dated 18.11.1991. ^{and} / allotment by order in favour of the Zoo Ranger/dated 13.12.1992 and the

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eviction order dated 6.1.1992 with respect to Quarter No.C-8, National Zoological Park, New Delhi, allotted to him on 19.7.1990.

2. The applicant has claimed the reliefs that the impugned orders dated 18.11.91, 13.12.91 and 6.1.92 (Annexure-A, B & C) be quashed and the respondent be restrained from allotting the quarter No.C-8, NZP, to another employee of the park.

3. The applicant is an employee of National Zoological Park and the quarters are situated in the area, which are allotted to the employees under Delhi Zoological Park Allotment of Quarters Rules, 1960. Rule-3 classifies the quarters as Class-III and Class-IV quarters and Class-III quarters are meant to be allotted to such essential service staff (Class-III) of the Delhi Zoological Park whose presence in the premises of the Zoo is deemed to be absolutely essential by the Superintendent of the Zoo. Class-IV quarters meant to be allotted to all subordinates in Class-IV cadre irrespective of their pay. The applicant was allotted a quarter by the order dated 19.7.1990 and since then the applicant is staying in the said quarter. The case of the applicant is that there was ^aselection for the post of Zoo Ranger and the applicant has challenged that selection by filing OA 2589/91 and this irritated the respondent and hence the

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quarter allotted to him was cancelled by the order dated 18.12.1991. The applicant has challenged the cancellation as the respondent has no power to cancel the said allotment or allotting the same to some other person. The other quarters are lying vacant. 'C' type of quarters can only be allotted to C-category employees whereas Administrative Officer and Curator are Gazetted Officers and entitled for a 'B' type of quarter. No notice and hearing was ever given to the applicant and the order of cancellation is, therefore, illegal.

4. The respondent contested the application and stated that the applicant was in need of ^aquarter and he has been working as Lab. Asstt. in the Zoo Veterinary Hospital since 6.1.1986. He applied for allotment of C-7 type of quarter in understanding that if Zoo Ranger is appointed, he will vacate the quarter, allotted to him, vide Annexure R-I. On this, the Director, by the Memo dated 19.7.1990 observed that quarter C-8 is reserved for Zoo Ranger carrying a pay scale of Rs.1400-2300 and service of the Zoo Ranger at the premises is considered essential. The post is likely to be filled up shortly. If Shri R.K. Sharma need the said house for a period of one month or the Zoo Ranger resumes duty, whichever is earlier, then his request can be considered. In this regard an undertaking was taken dated 20.7.1990

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(Annexure R-2/III) in which the applicant has stated "I hereby undertake that I shall vacate the C-8 quarter allotted to me within 2 days of its cancellation without any correspondence on the matter. I further understand that C-8 is reserved for Zoo-Ranger. And I do not have any claim over the said quarter." Then by the order dated 23.7.1990, quarter C-8 was allotted to the applicant (Annexure R-2/IV). It is further stated that the applicant has suppressed material fact and since Zoo-Ranger has since been appointed the quarter has been to Zoo Ranger. allotted/ In the rejoinder filed by the applicant he has re-iterated the same ^{facts}/. It is further stated that he earlier filed OA 258/90 ^{which} was withdrawn when an assurance was given ^{by the respondents} to the applicant to allot a quarter to him as and when the quarter falls vacant.

5. I have heard the learned counsel for both ^{the} parties at length and have gone through the records of the case. The learned counsel for the respondent during the course of the arguments has also filed a copy of the judgement given by the S.B. on 13.3.1992 in OA 3040/91 - R.K. Khan Vs. Dr. B.M. Arora. In this case also the matter related to allotment of the quarter C-4 to the applicant of that case Shri R.A. Khan. In that case it has been held that the order of cancellation of the quarter is not illegal. In that case also the quarter C-4 was allotted

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to a Zoo Ranger. The applicant of that case is a Education Assistant and he was allotted a quarter on 25.4.1988 temporarily. The case of the applicant is also similar to that of Shri R.A. Khan. In the case of the applicant he has been given only a temporary allotment of the quarter C-8 for one month or till the time a Zoo Ranger joins. The selection for Zoo Ranger was in progress and the applicant has also appeared in the selection and also challenged that selection by filing OA 2589/91, which is still pending. The applicant has also given an undertaking (Annexure R-2/III) wherein it is clearly written that he will vacate the quarter when ^{allotment} ~~it~~ ^{ed} ~~is~~ cancelled and when Zoo Ranger joins. In fact, the applicant applied for the allotment of quarter on the hope that he will qualify the selection of Zoo Ranger and so he may be ultimately allotted the quarter. The application for allotment given by the applicant on 18.7.1990 (Annexure R-2/I), clearly goes to show that the applicant at that time was aspiring for selection. This quarter was also vacated by another Zoo Ranger. Thus, the allotment in favour of the applicant was only temporary and very much to his knowledge that when a Zoo Ranger is appointed the allotment will be cancelled. The applicant has also assailed the order of cancellation on the ground that he has not been given any hearing. The applicant himself has stated that

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the selection of Zoo Ranger is being held. The order of cancellation of allotment is of 18.11.91 and the order of allotment in favour of Zoo Ranger is 13.12.91. The applicant has filed present application on 7.1.1992. It is, therefore, evident that the applicant very well knew the reason of cancellation and now he states that he has not been given any opportunity to show cause regarding cancellation of allotment in his favour. In the undertaking given by the applicant (Annexure R-2/III) he has clearly stated that he undertakes to vacate the quarter within two within 2 days of its cancellation. Thus, it was not at all necessary to issue a notice to the applicant before passing an order of cancellation of allotment.

6. The applicant has also challenged the power of cancellation of allotment. The challenge to the power of the Director has not been seriously pressed during the course of the arguments. The application is to be submitted to the Director and the Director has been given the power to take action in case of breach of any of the rules of allotment preferred to above.

7. Regarding the essential nature of the work for whom the quarters are primarily meant Superintendent has only
get the power to judge the same. The applicant, according to his own wisdom substituted classification for

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them, whether the particular employee belongs to essential category or not? The respondent have also filed a list of the persons who belongs to essential category. (Annexure to the reply affidavit of the respondent dated 6.3.92). An Administrative Officer of Zoological Park /has been shown as of essential category staff. The applicant has also filed a number of documents to show that as a Lab. Asstt. also his presence is required essentially for the treatment of Zoo animals. He has also to treat the zoo animals in case Vateriaary Doctor is absent, he has also to check the diet of the Zoo animals. However, by performing such type of duty an employee cannot be categorised as an essential category unless and untill the Superintendent of Zoo expressly clasifies that post and the holder of that post ^{is} in the essential category.

8. I have considered the matter in detail and find that the presence of the Zoo Ranger is more necessary and the applicant himself is estopped to resile from his earlier undertaking in this regard. In fact, the applicant knew at the time that the quarter is to be given to a Zoo Ranger and he ^{also} applied for the post.

The Zoo Ranger has since joined the order of cancellation of allotment /cannot be said to be malafide. At the time when the applicant was allotted this quarter he very well knew

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that it is for one month or till the Zoo Ranger joins the post. He has already continued to live in the house for about 2 years. He should not feel any grudge because he has to go out of the house only on the earlier assurance he has given in writing that in case the house is allotted to a Zoo Ranger he will vacate within two days without any correspondence.

9. In view of the above circumstances, I find that the present application is devoid of merit and is dismissed leaving the parties to bear their own costs.
The stay granted is vacated.

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24.4.92
(J.P. SHARMA)
MEMBER (J)