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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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O.A. NO. 1065/92

DECIDED ON : 9.9.1992

Amar Singh & Another

... Applicants

Vs.

The Directorate (Medical) & Drs...

Respondents

CORAM : THE HON'BLE MR. P. C. JAIN, MEMBER (A)

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

1. Whether to be referred to the Reporter ? *yes*.
2. Whether reporters of local newspapers may be allowed to see the Judgment ? *yes*.
3. Whether Their Lordships wish to see the fair copy of the Judgment ? *No*.
4. Whether to be circulated to other Benches ? *No*.

J. P. Sharma
(J. P. SHARMA)
MEMBER (J)

P. C. Jain
(P. C. JAIN)
MEMBER (A)

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CORAM : THE HON'BLE MR. P. C. JAIN, MEMBER (A)
THE HON'BLE MR. J. P. SHARMA, MEMBER (J)

Shri V. P. Gupta, Counsel for the Applicants

Shri G. R. Nayyar, Counsel for the Respondents

J U D G M E N T

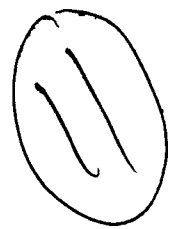
By Hon'ble Shri P. C. Jain, Member (A) :

There are two applicants in this O.A. under Section 19 of the Administrative Tribunals Act, 1985. Applicant No.1, Shri Amar Singh, was employed as a Head Clerk in the ESI Hospital, Basai Darapur, New Delhi when he retired on superannuation on 31.7.1990. While in service, he was allotted quarter No. 149-150/II, ESI Colony, Basai Darapur, New Delhi. Applicant No.2, Shri Rajinder Kumar, is his son who was appointed to the post of Radiographer at ESI Hospital, NOIDA on provisional, purely temporary and ad-hoc basis w.e.f. 23.3.1990. As the applicant No.1 after his retirement from the service of the Employees' State Insurance Corporation did not vacate the aforesaid quarter after the permissible period of four months, he was asked to vacate the same and ultimately an order was also passed by the Estate Officer under sub-section (i) of section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 on 9.3.1991 asking him and all persons who may be in occupation of the said premises to vacate the same within 30 days of the date of issue of that order. This is the impugned order in this O.A.

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2. The applicant No.1 had also requested the authorities to allot the aforesaid quarter to his son on compassionate grounds as his son had been employed by the Corporation before his retirement. Such request was not acceded to and finally rejected on 7.3.1991. In September, 1991 the applicant No.1 was informed by the Medical Superintendent, ESI Hospital, Basai Darapur, New Delhi that retention of the aforesaid quarter by him stands cancelled w.e.f. 1.12.1990 and that he was unauthorised occupant of the same, and, therefore, advised to vacate the said quarter within three days from the date of receipt of that letter failing which eviction proceedings were to be started. It appears that he filed Civil Writ Petition No. 2837/91 in the High Court of Delhi and by order dated 24.9.1991 notice was directed to be issued to the respondents returnable on 22.10.1991 and status quo was directed to be maintained as on that date. However, by order dated 9.4.1992 the above writ petition was dismissed by the High Court of Delhi as withdrawn as the learned counsel for the respondents stated that the subject matter of this writ petition was covered by the provisions of the Administrative Tribunals Act and the learned counsel for the petitioner accordingly sought liberty to withdraw the same. It is in this background that this O.A. has been filed praying for setting aside and quashing the orders dated 7.3.1991, 5.3.1991, 8.4.1991, 9.7.1991 and the eviction orders dated 9.8.1991, and for a direction to the respondents to follow their policy in a uniform manner, free of discrimination and to allow the quarter No. 149-150, ESI Colony, Basaidarapur, New Delhi in the name of applicant No.2, as has been done in a number of cases.

3. The main contention of the applicants in this case is that the eviction order dated 9.8.1991 has been passed under the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 but the provisions of this Act have no application in their case, as the premises are not covered under the said Act and the respondent Estate Officer has no jurisdiction to pass the aforesaid orders. The contention of the respondents is that the Employees' State Insurance Corporation has been set up under a Central Act and is substantially controlled by the Central Government as would be clear from the provisions of Sections 4, 16, 21, 92 and 95 of the Employees' State Insurance Act, 1948. Section 4 which deals with the Constitution of the Corporation inter alia provides for a Chairman to be nominated by the Central Government; a Vice Chairman to be nominated by the Central Government; not more than five persons to be nominated by the Central Government; one person each representing each of the States in which this Act is in force to be nominated by the State Government concerned; one person to be nominated by the Central Government to represent the Union Territories; five persons representing employees to be nominated by the Central Government in consultation with such organisations of employees as may be recognised for the purpose by the Central Government; five persons representing employers to be nominated by the Central Government in consultation with such organisations of employers as may be recognised for the purpose by the Central Government; and two persons representing the medical profession to be nominated by the Central Government in consultation with such organisations of medical practitioners as may be recognised for the purpose by the Central Government. Under section 16, the



Central Government has the power to appoint the Principal Officers of the Corporation, viz., a Director General of Employees' State Insurance Corporation; an Insurance Commissioner; a Medical Commissioner; a Chief Accounts Officer; and an Actuary. Under section 21, the Central Government has been given the powers to supersede the Corporation or its Standing Committee and in that event to nominate or cause to be nominated or elect new Members to the Corporation in accordance with section 4 and for constituting a new Standing Committee under section 8, as also in its discretion to appoint such agency, for such period as it may think fit, to exercise the powers and perform the functions of the Corporation. Under section 92, the Central Government has been given powers to give directions to a State Government for carrying into execution of the Act in that State. Under section 95, the Central Government has been given powers to make rules after consultation with the Corporation. Under section 32, the budget prepared by the Corporation is required to be submitted to the Central Government for its approval. Under section 33, the form and in the manner in which the Corporation is to maintain accounts of its income and expenditure is to be prescribed by the Central Government. The auditors for auditing the accounts of the Corporation are to be appointed by the Central Government under Section 34. Under section 35, the Corporation is required to submit to the Central Government an annual report of its work and activities. There are also other provisions in the Employees' State Insurance Act, 1948, as amended from time to time, which go to show that the Corporation is substantially controlled by the Central Government. The provisions of clause (e) (2) (ii) of section 2 of the Public Premises (Eviction of

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Unauthorised Occupants) Act, 1971, are, therefore, applicable and the premises belonging to or taken on lease by or on behalf of the Corporation, come under the definition of the term "public premises" as defined in clause (e) of section 2 of the Act *ibid*. Thus, it has to be held that the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 are applicable to the quarter in question and the contention of the applicant in this regard is without force of law.

4. Another ground taken by the applicants is that in accordance with the relevant instructions on the subject of concession of allotment or quarters to dependents — on retirement, as extracted by the applicants from Swaney's Manual on Establishment and Administration and filed as Annexure-V to the O.A., the applicant No.2 fulfils the conditions prescribed therein for being allotted the accommodation in question in his name. The instructions on which the applicants have relied upon state that when a Government servant in occupation of a general pool accommodation retires from service, his/her son, unmarried daughter, or spouse may be allowed accommodation from general pool on ad-hoc basis, if the proposed allottee satisfies the following conditions :-

- (1) Should be eligible for allotment from general pool.
- (2) Should have resided continuously for the last three years or more with the retiring employee, and should not have drawn H.R.A. for that period if employed in the same station and residing with the retiring employee in the same Government accommodation.



- (3) If appointed or transferred to the station within three years, the date on which so appointed or transferred will be the crucial date for enforcing condition (2) above.
- (4) xxx xxx (not relevant for this case).
- (5) The retiring employee or any member of his family should not own a house in the place of posting of the dependant.
- (6) All dues/outstandings pertaining to the premises occupied by the retiring employee have been completely cleared.

The allotment will be one type below the dependant's entitlement, but not higher than the type occupied by the retiring employee, except in special circumstances.

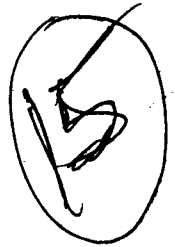
The concession would not be available to an eligible dependant, if any other dependant (member of the family) is already in occupation of Government accommodation. It is stated by the applicants that applicant No.2 has been residing in the premises allotted to applicant No.1 for more than three years and that applicant No.2 (dependant) has not drawn house rent allowance from the date of his appointment. These facts are not disputed by the respondents in the short reply filed by them. What is disputed, however, is that as ~~the xxxxxxxxxx No.2 is xxxxxxxx xxxxxxxx~~ ~~from xxxxxxxx~~ the quarter in question has ceased to be a part of the general pool accommodation after orders were issued on 24.11.1978, applicant No.2 is not entitled to benefit of allotment on ad-hoc basis under these instructions. The applicability of these instructions to the employees of the Corporation as such has not been disputed. In the memorandum dated 24.11.1978 (Annexure R-1 to the counter affidavit) it is stated that keeping in view the



increased bed strength of the ESI Hospital, Basai Darapur, New Delhi and requirement for more residential quarters for the staff working in the Hospital, the Director General has agreed to the diversion of all quarters irrespective of the type when vacated in the Hqrs./R.O. or in DMD quotas to the hospital quota. It is further stated that accordingly, henceforth as and when any quarter is vacated in any of the above three quotas the same may be included in the hospital quota and allotted to the staff working in the Hospital in accordance with the allotment rules and the priority list maintained for the same. The respondents have stated in their reply that the above quarter attached to the ESI Hospital, Basai Darapur, New Delhi was allotted to the applicant No.1 before issue of the orders dated 24.11.1978, but now after the issue of these orders this Hospital's quarters cannot be allotted to staff other than the staff posted to this Hospital. As applicant No.2 is posted in another ESI Hospital at NOIDA, according to the respondents, he is not entitled to the allotment of the same quarter under the relevant instructions already referred to above. This contention has not been rebutted by placing any other material on record by the applicants. Accordingly, we have no alternative except to hold that Quarter No. 149-150/II, ESI Colony, Basai Darapur, New Delhi is meant only for the staff posted to that Hospital and is not available under the relevant rules for allotment to applicant No.2.

5. The applicants have also taken the plea of discrimination inasmuch as some names have been mentioned who are said to have been allotted quarters out of turn on compassionate grounds. However, all the relevant particulars of those cases have not been placed on record to enable us to find

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out whether the material facts of those cases are identical to the facts of the case before us. The rules do permit for allotment out of turn to dependants of a retiring employee or an employee who dies in harness. However, this alone is not enough and what is required to be shown is that the relevant conditions are applicable to the facts of a particular case. As we have already held above, the applicant No.2 is not entitled under the relevant instructions to the benefit which he is seeking in these proceedings. Needless to state that applicant No.1 who had retired from service on superannuation on 31.7.1990 has no legal right whatsoever to continue to occupy the residential accommodation allotted to him by virtue of his being in service of the respondents after the permissible period of four months after the date of the retirement.

6. In the light of the foregoing discussion, we hold that this O.A. is devoid of merit and is accordingly dismissed leaving the parties to bear their own costs. Needless to state that the interim order passed on 20.4.1992 and which has continued since then automatically stands vacated.

J. P. Sharma

(J. P. SHARMA) 9.9.92
MEMBER (J)

P. C. Jain 9/9/92

(P. C. JAIN)
MEMBER (A)