

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1142 of 1992

New Delhi, this the 14th day of January, 1998.

Hon'ble Mr. N. Sahu, Member(A)
Hon'ble Dr. A. Vedavalli, Member(J)

S.K. Jain,
S/o Late Shri Prakash Chand Jain
Retd. Executive Engineer(Civil)
C.P.W.D.
R/o R-6/113, Raj Nagar,
Ghaziabad - 201 001

...Applicant

(By Advocate : Shri Sohan Lal)

Versus

Union of India: Through

1. The Secretary
Ministry of Urban Development
Government of India
Nirman Bhawan
New Delhi- 110 011

2. Director of Estates
Government of India
Nirman Bhawan
New Delhi - 110 011

3. Director General of Works
Central Public Works Department
Nirman Bhawan
New Delhi - 110 011

... Respondents

(By Advocate : Sh.K.C.D. Gangwani)

ORDER

By Sh. N. Sahu, Member(A) -

In this OA the applicant prays for quashing the order of the Director of Estates dated 27.06.1991 for recovery of Rs.24,879/- in respect of Quater No.SIV/1128, R.K. Puram, New Delhi upto 31.01.1990 in accordance with SR-317-B-22. His second prayer is to direct the respondents to limit the licence fee for this quarter at one and half times the standard licence fee as defined under FR-45-A upto 31.01.1990. He states that this licence fee was already deposited by him on 30.12.1991 amounting to Rs.2,941/-.

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2. The brief background facts leading to this dispute are as under:

The applicant allottee of Quarter No.SIV/1128, R.K.Puram, New Delhi was on deputation as Assistant Engineer (Civil) in Indira Gandhi Open University, Ministry of Human Resources, New Delhi. He was allowed to retain the Government accommodation on payment of special licence fee for the entire period of deputation. He was transferred and posted in the North Eastern Region. He relinquished the charge of office at New Delhi on 31.08.1988 and had taken over charge in the North-eastern Region on 12.09.1988. He applied for retention of the above mentioned quarter by his letter No.SW/ACC/MISC/88 dated 04.10.1988. It is admitted that he was entitled to Type-V accommodation according to the pay drawn by him and he occupied one type below his entitlement, namely, Type-IV. On 22.11.1988 the Directorate of Estates issued an eviction notice but the applicant requested the Directorate to reconsider his request in view of the instructions of the Ministry of Urban Development's OM No.12035(24)/8/Pol dated 02.06.1984. This letter was written by him on 07.12.1988. On 07.02.1989 he was asked to mention certain particulars about the pay received and the date of relinquishment of charge. The Directorate by their letter dated 20.03.1989 regretted that his request for continued retention of quarter could not be acceded to. On 06.07.1989 he was informed that he would be entitled

forwards

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to an alternative Type 'C' accommodation (Type-III) on the basis of his pay on the crucial date in that allotment year i.e. 01.07.1987. The applicant by his letter dated 18.05.1989 intimated that an alternative Type III may be sanctioned to him. The respondents by their letter dated 06.07.1989, Annexure 'O' replied as under:

"In continuation of this Directorate's letter of even number dated 22.11.88 and with reference to your endst. No. 15(647)Acc/89-E dt.18.5.89 on the subject cited above, I am directed to say that in terms of orders contained in Min. of Works & Housing, Directorate of Estate's O.M. No.12035(24)/77-Pol.II dated 15th February, 1984 and 2nd June 1984, it has been decided to sanction alternative type-'C' residential accommodation to Shri S.K. Jain in R.K. Puram on priority basis for the bonafide use of her family to enable him to vacate type-D accommodation No.S-IV/1128, R.K. Puram presently in his occupation. The above provision of alternative accommodation of type-'C' will be subject to recovery of licence fee at the rate of 1-1/2 times the standard licence fee as defined under FR 45-A for the accommodation offered or 15% of the emoluments drawn by him as defined under FR 45-G on the date of his transfer, whichever is

timeable

less, for the period beyond the permissible period for retention of the residence under SR 317-B-11(2).

2. It may also be noted that failure to accept alternative accommodation of Type- C and to vacate quarter No.S-IV/1128, R.K.Puram in his occupation will render him liable to payment of damages at market rate in accordance with SR 317-B-22, in respect of the entire premises for the period of overstay. The damages will be recoverable for occupation of the residence, services, furniture and Garden Charges in accordance with the Rules. Besides, this necessary action to evict the family under the public premises (Eviction of Unauthorised Occupants) Act, 1971 will be taken.

3. The allotment will be made in due course. This will be effective upto 31st Jan. 1989 or your date of reposting at Delhi which is earlier."

Actually, the alternative accommodation was intimated to him by a letter dated 20.12.1989 which was accepted by him and the earlier occupation of the quarter No.SIV/1128, R.K. Puram, New Delhi was vacated on 31.01.1990. Six months later he received a notice for recovery of Rs.24,789/- on account of the damages for Quarter No.SIV/1128, R.K. Puram, New Delhi occupied by him w.e.f. 01.09.1988 to 31.01.1990. He pleaded

Parasmita

that he complied with the conditions mentioned by the Directorate's letter dated 06.07.1989 by accepting the alternative accommodation and, therefore, he should not be made liable to pay any damages. He prayed for regularisation of the quarter upto 31.01.1990 in his name with licence fee at the rate of one and half of standard licence fee for the period beyond the permissible period for retention of the residence.

3. The respondents stated that the intial allotment of a Type-III quarter SI/47, R.K. Puram, New Delhi was not accepted by him within eight days from the date of issue of the allotment letter. Thereafter, SI/71, R.K. Puram, New Delhi (Type 'C') was allotted and the same was accepted by him. The damages were reckoned as under:

"Shri Jain vacated the quarter No.S-IV/1128, R.K. Puram, on 1.2.90(F.N.) and the Damages has been assessed from the date of cancellation to date of vacation in accordance of provision of SR-317-B-22 of the allotment rules which comes to Rs.20,100/- but he has not made any payment upto now. The details of the dues are as follows:-

<u>Arrear (Spl.L.F.-Normal L.F.)</u>		
31.8.87 to 6/88(418-82)= 336/-		Rs.3370-85
<u>Missing recovery</u>		
1.7.88 to 31.10.88 @418/-		Rs.1672-00
<u>Damages rates</u>		
1.11.88 to 31.1.90 @ 1340/-		Rs.20100-00

		Rs.25142-85
Less paid(-)		Rs. 264-00

		Rs.24878-85

Say		Rs.24879-00 "

Shankar

4. The crucial documents to be considered here are Annexures O & P. The first letter (Annexure-O) dated 06.07.1989 is already extracted above. It is stated that the allotment would be made in due course and would be effective upto 31.01.1989 or till reposting in Delhi, whichever is earlier. In Annexure-P dated 20.07.1989, there was an amendment which stated that the allotment would be made in due course and would be effective upto 31.12.1989. The allotment was made on 26.10.1989 granting the S-XII/47, R.K. Puram, New Delhi in lieu of the existing quarter. Within a week, the applicant accepted the accommodation and requested the Director of Estates to release the order to his son Shri Pankaj Jain, who was authorised to take possession of the above quarter. There was also an official communication from CPWD dated 06.11.1989 on behalf of the applicant conveying acceptance and also asking the Director of Estates to hand-over the possession slip to his son. On 20.12.1989 he received another communication granting him Quarter No.S-I/7, R.K. Puram, New Delhi and cancelling the earlier allotment. Here again, the applicant wanted the possession slip to be handed over to his son. The same was acted upon and the possession slip was issued on 08.01.1990. The possession of the quarter was taken over on 10.01.1990 and the quarter No.S-IV/1128, R.K. Puram, New Delhi was vacated on 01.02.1990.

5. In view the above narration of events we fail to understand as to how this is a case which calls for levy of damages. The applicant was entitled

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to an alternative accommodation for the bonafide use of the members of his family on the basis of the policy guidelines dated 15.02.1984 and 02.06.1984 in lieu of a posting in the North Eastern Region. These guidelines could have been implemented on the application of the applicant dated 04.10.1988. When the guidelines are clear there was absolutely no need for the respondents to dither and delay the allotment applicant for a period of roughly one year.

6. We have carefully considered the entire record and we are unable to notice any delay or default or contumacy on the part of the applicant. He applied in time for retention of accommodation. When he was advised about the correct entitlement which is Group 'C' (Type-III) he also applied for an alternative accommodation. The applicant's claim was allowed in July, 1989 and a clarification was issued in September, 1989 and allotment was issued in October, 1989 which allotment was again changed on 20.12.1989 (Annexure-T). The responsibility for the prolonged delay is wholly and exclusively attributable to Respondent No.2. We are unable to find any lapse on the part of the applicant. We have perused the instructions of the Ministry of Works and Housing dated 15.02.1984. The instructions are categorical. It is a privilege and a benefit given to Civilian Central Government Employees posted to the North Eastern Region for the bonafide use of the members of their family. Once the need for this use has been accepted by respondent No.2, he should have decided possibly within two weeks from the date of relief from

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Delhi and joining the North Eastern Region. The conditions mentioned at Para C, D and E of the circular have been complied with by the applicant. The first condition is that it is obligatory on the part of such an officer desiring to retain accommodation at the station of his last posting to accept alternative accommodation offered to him. The second condition is that the request for retention of accommodation should reach the Directorate within one month of his relinquishment of charge. The third condition is that the officer concerned should intimate the Directorate of Estate, the date of relinquishment of charge immediately prior to his posting in the North Eastern Region. We notice that the applicant fulfilled the second condition within one month of joining the North Eastern Region and the third condition of intimation was fulfilled because he informed his request on 04.10.1988 which is within one month of his taking over charge on 12.09.1988. The respondents in their counter have stated that these conditions have not been fulfilled. In a subsequent amendment a period of three months is allowed for making a request for alternative accommodation.

7. We have absolutely no hesitation to hold that the levy of damages to the extent of Rs.20,100/- is without merit. Such a levy is not on account of any default or remissness on the part of the applicant. The notice to him by the impugned order No.8294(4)/89-91/Damages dated 27.06.1991 to the extent of the above amount is hereby quashed. Respondents shall charge additional rent at the rate

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of one and half times the standard licence fee as defined under F.R.45(A) subject to such other modification as per rules on the subject. The other parts of the demand, namely, arrears to the extent of Rs.3,370/- and "missing recovery" to the extent of Rs.1,672/- are items that do not call for interference. If the applicant still has any grievance against them he can represent against the same which representation will be disposed of within one week after hearing the applicant.

8. Subject to the above observations, the OA is disposed of. No order as to costs.

A. Vedavalli

(Dr. A. Vedavalli)
Member (J)

N. Sahu, 14-1-98
(N. Sahu)
Member (A)

/Kant/