

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

Date of Decision: 21.07.92.

OA 1185/92

S.M. DUTT

... APPLICANT.

Vs.

UNION OF INDIA & ORS.

... RESPONDENTS.

CORAM:

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

For the Applicant

... SHRI R.L. SETHI with
SHRI ASHISH KALIA.

For the Respondents

... SHRI P.H. RAMCHANDANI with
SHRI A.K. BEHRA.

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

JUDGEMENT (ORAL)

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

The applicant was earlier engaged as Linesman in Delhi Telephones and has been working in President's Estate as Linesman since 1978. While working there, there was an accommodation meant for such officials and he was allotted that accommodation by virtue of his work in President's Estate. The applicant appears to have applied to the parent department in 1983 for allotment of P&T pool accommodation but he was told that the matter will be considered when he returns to the parent department. The applicant was re-posted under the

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respondent No.2, now designated as MTNL, and Corporated Company looking after the business of Delhi and Bombay telephones. The applicant after his posting to south block on 17.2.92 requested respondent No.2 for providing him an alternative accommodation but he has not been given any allotment order nor given a suitable reply. The applicant, therefore, in this application prayed that respondent No.2 be directed to allot to the applicant an alternative accommodation in the pool under him and further the Secretary, President's Secretariat (Respondent No.1) be restrained from recovering penal rent and continue the applicant in the present accommodation on normal rent/licence fee until alternative accommodation is provided.

The respondent No.1, through the Senior Government counsel opposes the application stating that the applicant belongs to Delhi Telecommunication Department and has absolutely no right to retain the accommodation of the President's Estate which is meant exclusively for persons who are working in the various establishments of the Rashtrapati Bhawan. Since the applicant is not an employee of Rashtrapati Bhawan, pool accommodation cannot be given to him in accordance with the rules governing allotment of accommodation of the President's Estate. It is said that the President's Estate has limited accommodation and is only meant for those employee of the Rashtrapati Bhawan or other such

employee who work in Rashtrapati Bhawan for a certain period. Under Rule 39(2) the provisions are laid down for retention of accommodation beyond the period of duty. The applicant being an employee of Delhi Telecommunication Department, is entitled for general pool of that department. Thus, the respondent No.1 put the applicant to proof to show as to how and in what circumstances he can overstay after the repatriation to the parent department from the post he was holding in President's Estate i.e. that of Linesman. Alongwith this counter the respondent No.1 has filed various annexures to support the averments made in the reply. Respondent No.2 & 3 also oppose the application taking preliminary objections that since MTNL is a Company as corporated under the Company Act and an autonomous body/department so in absence of the notification under Section 14(2) of the Administrative Tribunals Act, 1985 the Central Administrative Tribunal has no jurisdiction in a matter in which the functioning of MTNL is involved. It is stated that the accommodation in question is allotted by the MTNL to the applicant on the basis of the seniority when he his turn matures.

It is further stated that when the applicant was already in Delhi Telephones he was never allotted

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till 1978 any accommodation from P&T pool and only as a result of his posting in the President's Estate by virtue of the rules governing that appointment he was provided with a residence for discharging efficient functions in odd hours of day and night. Thus, according to the respondents the applicant is not yet eligible by virtue of his seniority to get P&T pool accommodation.

Regarding the various communications addressed to the applicant in 1983 it is stated that what the respondents conveyed to the applicant was consideration in his turn at a time when the applicant will be serving in the parent department.

I have heard the learned counsel for both the parties at length and have gone through the records of the case including the annexures attached to the pleadings of the parties and including the rejoinder.

It is a fact that Delhi Telephones are now re-designated by virtue of re-organisation creating an autonomous incorporated company Mahanagar Telephone Nigam Limited, in short MTNL registered under the Registrar of Companies. Though, the assets and liabilities of the Delhi Telephones as well as the employees working with them came directly under the said

MTNL but technically according to the learned counsel for the respondents provisions of Rule 14(2) ousts the jurisdiction of the Tribunal in the absence of contemplated or visualise notification by the competent authority conferring jurisdiction on the Tribunal regarding its employees. The learned counsel for the respondents boosted the arguments by a judgement of Division Bench of CAT PB D.P. Srivastava Vs. UOI decided on 23.9.91 (Annexure R-1) where the employee was allotted MTNL accommodation and when he was relieved from his post under MTNL he was issued notice for recovery of damage rent and the Tribunal after hearing both the parties held that the Tribunal has no jurisdiction and also relied various law/precedent cited before the Bench. Thus, *prima-facie* it appears that the applicant, who is an employee of Delhi Telephones cannot be allotted the accommodation which has come to MTNL pool by virtue of succession from Delhi Telephones.

Regarding respondent No.1 President Estate, the applicant has no case that he should be allowed to retain the allotted residence on the normal charge of licence fee till he is provided an accommodation by the respondent No.2 and 3. Thus, the application is maintainable, even if for arguments sake the contention of the learned counsel for the respondent No.2 & 3 is accepted, as regards respondent No.1 is concerned.

As regards the case of respondent No.1 the learned counsel for the applicant in the exhaustive pleadings or in the arguments during the course of the hearing could not show any rule or instructions or precedent to the effect that an employee who is not on the regular rolls of employees of the President's Estate can retain the allotted accommodation when such employee gets repatriated to his parent department. The learned counsel for the applicant invoked the mercy, magnanimity and equity claiming with an employee who has worked since 1970 till 1990 should not remain on the roads. There is limited scope to consider such aspects on the line of reasoning of equity and mercy asserted by the learned counsel for the applicant. The rules for allotment of the residences for the President's Estate have to be adheared to and the applicant himself at one time was beneficiary of these rules. He cannot seek relexation of the rules in his case of an individual as against the interest of society. Thus, the applicant has no case to retain in the residential President's Estate after his transfer or repatriation to the parent department. It is for the President's Estate to take magnanimous view regarding realisation of recovery of damage rent from the applicant.

Regarding the allotment of alternative accommodation by MTNL/respondent No.2 & 3 I am inclined

to dispose of the application on merit as having heard the same on the various contentions raised by the parties. But decision of this matter on merit will not lay down a precedent that in every case such an employee where MTNL has successor of Delhi Telephones as a party is amenable to the jurisdiction of the CAT. It is only because the matter continued for long for the arguments of the applicant ,then the arguments of jurisdiction were advanced by the learned counsel for the respondents at the adjourned hearing today. Basically I am in full agreement and subscribe to the opinion of the Division Bench judgement referred to above (Annexure R-1).

Since the MTNL is successor of Delhi Telephones and they have got certain accommodation earmarked for the employees working under MTNL and they were also thinking on this line when they addressed communications to the applicant. What is stated by them is that the matter is under consideration which mean nothing else that if the applicant is otherwise eligible and falls within the category of such allottees then he may be considered and obviously for allotment of MTNL pool accommodation. What is canvassed during the course of the arguments is that the applicant has not come up to the mark by virtue of his seniority in service for being allotted an accommodation. The letter (AnnexureA-5) is a reciprocal arrangement with those

employees who are allotted accommodation by Directorate of Estates while working in an other organ of Central Govt. and on return to parent department such other employees who had already an accommodation of Directorate of Estates of the general pool are accommodated by giving them one type below accommodation in MTNL pool. The case of the applicant is different as he was never given a general pool accommodation by Directorate of Estates. The applicant has come from the President's Estate pool by virtue of his specific posting as an employee in the President's Estate. Thus, Anexure A-6 which lays down certain policy does not help the applicant for out of turn allotment for priority in allotment from the MTNL pool.

The learned counsel for the applicant has referred to the communicatin dated 14.5.92 (Annexure A-7) where he was asked to submit better particulars for his claim for allotment giving out details as to how and when he got an accommodation in President's Estate. The applicant has submitted the reply but he has not been informed as to the result of this application. The learned counsel for the applicant out of the names of 4 employee B.C. Aggarwal, JTO, Ramesh Batra, SDO, R.K. Sharma, Booking Clerk CTO and B.D. Sharma, Technician. The learned counsel for the respondents No.2 & 3 on the basis of this argument has given an assurance that if any of them is junior to the applicant then the

applicant shall also be considered on the same lines and pattern.

I have considered all these facts, the relief of the applicant with regard to the retaining accommodation in President's Estate at normal licence fee is rejected. With regard to the relief for allotment of alternative accommodation in the absence of an adequate and reliable data in the pleadings no specific direction can be given. However, the matter shall be considered by the respondent No.2 & 3 on the basis of the assurance of the learned counsel for the respondents keeping in view the practice prevalent in such similar cases of other employees. It is desired that the respondents shall inform the applicant about the result of his request for allotment within a reasonable time. In the circumstances, parties to bear their own costs. The interim order earlier granted stands vacated.

J. P. Sharma

(J.P. SHARMA)
MEMBER (J)
21.07.92.