

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA 1241/93

NEW DELHI, this 17th day of December, 1993.

Hon'ble Shri C.J. Roy, Member (J)

Smt. Bharti Vaid
w/o Shri Dr. S.P. Vaid
E-808, Curzon Road Hostel
New Delhi-110 001
By Shri B.Krishan

.. Applicant

Versus

The Union of India, through

1. The Director of Estates
C, Wing, 4th Floor, Nirman Bhavan
New Delhi

2. The Estate Officer
Dte. of Estates
C Wing, 4th Floor
Nirman Bhavan, New Delhi .. Respondents

By Shri P.P.Khurana, Addl. Standing
Counsel

ORDER

The applicant is aggrieved by the letter dated 29.1.93 rejecting his request to retain the Government accommodation and also the eviction order dated 22.4.1993. He is seeking regularisation of the said accommodation in his favour and also quashing of the eviction order dated 22.4.93.

2. Briefly stated, the facts of the case are that the applicant was allotted the said accommodation having living area of less than 40 sq. mtrs. while she was working in Delhi and she was transferred to Jammu in May, 1992, the accommodation was cancelled with effect from 18.7.92 vide letter dated 23.11.92. She avers that at the time of her transfer, she was given to understand that the transfer was a routine one for a short period of time and based on policy guidelines of the Government ^{and that} she was further assured that her family in Delhi would be allowed to retain the said accommodation. She also made a request to this effect from Jammu in July, 1992. But she was shocked to receive a notice dated 13.1.93 under PP Act, to which she could reply only on 19.3.93. But in the meantime,

rejection letter dated 29.1.93 was also issued to her. She claims that Jammu is a disturbed station like that of North-Eastern State Zone due to terrorist activities and also because of the respondents' assurance that her posting back to Delhi is under consideration, the rejection letter should not have been issued. She has also assailed the action of the respondents in treating her as unauthorised occupant of the said accommodation and levying damage rent from 18.7.1992. Hence this application.

2. The respondents have filed their counter stating that the OA is time-barred as the petition related to the memo dated 13.10.88. They say the cancellation was done after issuing a notice to the applicant u/s 4 of the PP Act. They say that the retention to an officer posted in Jammu & Kashmir can be allowed if she is sent on deputation and not transferred, that too if she belongs to any of the All India Services or para-military personnel and intelligence personnel and also that the retention should be supported by a recommendation from the Ministry of Home Affairs, whereas none of these conditions is fulfilled in this case. They say that the damage rents were determined as per rules and that the applicant has not filed any appeal against the eviction order. They, therefore, claim that the applicant has no right whatsoever to continue in the said accommodation.

3. We have heard the counsel for the parties. The short point for consideration is whether the applicant could be allowed to retain the accommodation at Delhi, while she is working in Jammu, especially when her elderly parents and minor daughter are reported to be living in the impugned accommodation.

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4. Even though it is denied by the respondents that the applicant has not made any appeal against the eviction order, it is seen from the file that the applicant's counsel has filed a case No. EC/3/AD/LII/93/Hostel on 19.3.93 before the Estate Officer, for dropping of the eviction proceedings, vide Annexure A-3. To this, the Estate Office have stated (at Annexure A-4) as under:

"Only officers belonging to All India Services (IAS/IFS/IPS) and paramilitary organisations are being allowed to retain government accommodation only when sent on deputation to Jammu & Kashmir. This retention is not being allowed on normal posting/transfer. Moreover, there is no specific recommendation from the concerned Ministry in this respect. As such Smt. Bharati Vaid is in unauthorised occupation of suit No. E-808, Curzon Road Hostel w.e.f. 18.7.92 as per Allotment Rules".

A copy of the DE OM No.1235(2)/90-Pol.II dated 19.3.90 in this regard is available at Annexure A-6(page 20).

5. The learned counsel for the respondents also argued that this Tribunal has no jurisdiction to entertain the case as the applicant has not gone to the District Court against the order of the Estate Officer. However, in view of the fact that the Full Bench of the Tribunal has held in the matter of Rasila Ram & Ors. Vs. **

UDI in OA 89/88 decided on 5.5.89 that "the employee aggrieved by cancellation of allotment orders can come to CAT, but once he goes to Estate Officer, he must seek remedy there-After Estate Officer's order again he can come to CAT or go to District Judge u/s 15 of PP Act-After disposal of case by District Judge, he can again come to CAT", the objection of the learned counsel for the respondents is overruled.

**Page 347 of FULL BENCH JUDGEMENTS(CAT)(1986-1989)

6. With reference to the limitation, since the show cause notice was issued to the applicant on 13.1.93 and the DA is filed in May, 1993, the contention of the respondents' counsel that the application is barred by limitation is negatived.

7. The applicant is working as an Information Officer in the Press Information Bureau and she belongs to all-India services as argued by her counsel, which is not countered. The argument of the Respondents' counsel is that the applicant is not entitled to the benefit of the OM referred to above. Since the applicant belongs to all-India service and now serving in Jammu and that she was promised to be transferred back to Delhi, which is not countered, the respondents have a right to make a slight relaxation in the Rules, so that these rules can be made applicable to the applicant, without taking any technical objection that will ~~cause~~ ^{bring} hardship to her.

8. The applicant being a lady officer on an important assignment of a Media Officer should have been shown leniency in allowing her to retain the quarter in Delhi, until she is continuing in Jammu, especially her aged parents and minor daughter are stated to have been staying in that small hostel accommodation.

9. In the circumstances, I feel that the applicant has made out a case for a direction. The application is allowed and the orders dated 29.1.93 and 22.4.93 are quashed and set aside, and the respondents are directed, as a special case, not to evict her family from the quarter and also not to charge damage rent. The application is thus disposed of. No costs.

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refd
(C.3. Roy)
Member (J) 17/12/93

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