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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
OA 2004/93
NEW DELHI, THIS 3rd DAY OF AUGUST, 1994

SHRI C.J. ROY, MEMBER(J)

Dr. Ms. Neena Diwan
DII/27, Kidwai Nagar
New Delhi

.. Applicant

By Shri B.Krishan, Advocate

VERSUS

Union of India through

1. Deputy Director (LIT)
Directorate of Estates
Nirman Bhawan, New Delhi

2. Estate Officer
Directorate of Estates
Nirman Bhawan, New Delhi .. Respondents

By Shri N.S. Mehta, Advocate

ORDER

The applicant is aggrieved by the eviction order dated 6.4.93 Annexure J) and cancellation letter dated 20.12.89 (Annexure O) in respect of the quarter mentioned above allotted to her. The facts of the case are that the applicant while working as Lecturer in Maulana Azad Medical College (MAMC in short), New Delhi, was allotted general pool flat No.D-II/24, Kidwai Nagar (West) in June, 1982 and in place of this flat, she was allotted flat No.D-II/27 in the same area in April, 1985. While so, the applicant was transferred to All India Institute of Hygeine and Public Health, Calcutta in October, 1987. After making necessary medical arrangement for her ailing mother and handicapped sister by retaining the said accommodation, the applicant took up her new assignment at Calcutta. By order dated 17.6.88, the applicant was transferred back to Delhi and posted to Lady Hardinge Medical College and Smt. S.K.Hospital. She was relieved from Calcutta on 30.6.88 and she joined new assignment at Delhi on 1.7.88.

2. The applicant addressed a letter on 19.1.90 (Annexure B) to R-1 requesting him to allow her to retain the said flat in order to avoid hardship and to regularise it enclosing therewith a letter from her Principal wherein it was stated that "a flat of the same type allotted to her would be made available to the Respondent in lieu of the applicant's flat when the same was available". On the other hand, the applicant was shocked to receive a letter dated 7.2.90 from R-2 alleging that she was an unauthorised occupant of the flat and calling upon her to appear before R-2 on 20.2.90 with evidence if any and show cause why she should not be evicted from the said flat. She sent her reply to the notice on 19.2.90 seeking further time to appear as she was confined to bed due to fractured foot. It is stated that she was informed through her brother that the date of next hearing would be 30.3.90. That being so, she was surprised to receive the letter dated 19.3.90 asking her to vacate the flat within 15 days. She made an appeal (Annexure F) against the letter dated 19.3.90. When she did not get any response from the respondent, she preferred an appeal before the Court of A.D.J. Delhi, who by his Annexure C order dated 14.5.92, after hearing both the parties stayed her eviction from the flat. The applicant filed her reply thereafter on 22.10.92 inter alia pleading to summon evidence in respect of other similarly situated officers who had been transferred outside Delhi for even longer periods and in whose case no action whatsoever had been initiated or taken. Her case was listed for hearing on 6.11.92 and adjourned to 18.11.92 at the request of the department to enable it to collect information from

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their record and file reply. Even though further adjournments were given the last one being 25.3.93, the respondents chose not to reply and opted to drop the proceedings on account of constitutional infirmity flowing from the arbitrary discrimination. Ultimately the respondents passed the eviction order dated 6.4.93 and affixed a copy of it outside the applicant's flat on 20.4.93 calling upon her to vacate the flat within 15 days. Left with no alternative, the applicant approached the Court of ADJ, Delhi again. However her appeal was disposed by order dated 28.5.93 (Annexure K) stating that it was beyond his (ADJ, Delhi) jurisdiction to go into it and decided that such an issue could be raised in any other appropriate forum. While her appeal was dismissed, she was permitted to vacate the flat on 31.7.93. The applicant's contention is that for the period of about 8 months she was away at Calcutta, she had paid the necessary licence fees inclusive of extra charges that the respondents imposed on her and is still paying the normal licence fee after her coming back to Delhi for the said quarter and also that she was not allotted any government accommodation while in Calcutta and therefore she should not have been treated as unauthorised occupant. Therefore, she has filed this OA with the prayers for quashing of the impugned orders and directing the respondents to regularise the quarter in her name.

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3. The respondents have filed their reply. It is stated that the fact of the applicant's transfer from Delhi to Calcutta was not intimated to them within the stipulated time of one month with the result there was delay in cancellation of allotment, i.e. the flat was cancelled in December, 1989 deemed to be effective from 19.12.87 after allowing 2 months' concessional period. The aver that the applicant has failed to secure the concessional period upto six months to retain the flat as per SR317-B-22. They deny having received any letter from the applicant's Hospital regarding placement of a flat in lieu of the applicant's flat, even though the applicant has attached a copy of the same to Annexure B of her OA. They admit receipt of applicant's appeal through dak on 20.2.90 for adjournment and the next date was 19.3.90 for further proceedings. They state that her request for regularisation of the flat has been rejected on the following grounds:

- (i) The transfer of the applicant was not reported to the Dte. of Estates within the stipulated period of one month;
- (ii) The applicant had not sought retention of the flat as permissible under the rules;
- (iii) The applicant was not posted back to Delhi within the retention period admissible
- (iv) The applicant was not posted in an eligible office

5. The respondents say that the instructions contained in their memo dated 1.8.88 read with memo dated 16.9.88 (Annexure R-V) are applicable only in case of unauthorised occupation pending as on 20.6.88 whereas the applicant was in unauthorised occupation outside

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Delhi till 30.6.88 and only with effect from 1.7.88 she has any claim for regularisation which however is not covered under the rules as she was posted in Delhi in an ineligible organisation for the allotment of Government accommodation.

6. The case of the applicant ^{is} ~~are~~ that during the period she remained in Calcutta. the flat had not been cancelled at any time and that no opportunity whatsoever was afforded to her to show cause prior to the order dated 20.12.89 treating as deemed cancellation. Her contention is that order dated 28.5.93 (Annexure K) of ADJ, Delhi, is obviously erroneous in so far as it has failed to take notice of the shortcoming in the proceedings taken by the respondents and so is the observation made by him that he had no jurisdiction to go into the question of discrimination pleaded by her in the absence of her counsel on account of the strike by the advocates. She further states that the Directorate of Estates OM dated 16.2.79 clearly provides that "doctors occupying General Pool quarters, who are transferred to any Government, which are having their own pool of accommodation are allowed to retain their quarters on payment of normal rate of licence fees till such time they are allotted accommodation from their respective hospital". Admittedly, she categorically states that she had not been allotted any accommodation from the hospital pool while at Calcutta. It is also averred by her that her case is covered by the OMs dated 1.8.88 and 16.9.88 on the subject of allotment of residence on re-posting issued by the respondents, extracts of which are as under:

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"President is pleased to decide, in relaxation of existing orders, that the pending cases of unauthorised retention of Government accommodation by such officers who, after their initial transfer etc. have been reposted to Delhi, even after the permitted//of retention, may be regularised subject to clearance by them of licence fee and damages as per rules. The unauthorised occupation will be regularised on payment of damages/market rate for the period beyond the permissible period of retention and upto the date of reporting to the station irrespective of the fact whether the date of priority on the date of reposting was covered or not. It has also been decided that such cases may be regularised where the officers were reported to the station where they were holding accommodation within the permissible period of retention but the accommodation could not be regularised as their date of priority was not covered on their reporting"

7. The case of the respondents are that it was for the applicant and her department to inform the fact of her transfer well in time which they failed to do. Her case is governed by allotment rules SR 317-B-11. The ADJ, Delhi while passing order dated 28.5.93 had found no illegality, infirmity or irregularity in the impugned eviction order. Their contention is that cancellation could not be made during 8 months of the absence of the applicant from Delhi due to her failure to intimate the fact of her transfer. It is also their case that the applicant is posted to an ineligible organisation for general pool accommodation and in view of the foregoing, the applicant is not entitled for the reliefs prayed for.

8. I have heard the learned counsel for the parties and perused the records made available to me. Now the short point for consideration is whether the applicant is entitled for the relief in view of the facts mentioned in the OA and also several judgements cited by her counsel in support of her case.

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9. Provisions of SR 317-B-22 read as follows:

"Permission to retain the residence may be granted for the special reasons involving (i) serious illness where one or the other member of the family can not be moved on medical advice or (ii) where one or more children are to take a final examination with the period of extension. The permission of retention of general pool residence should be granted on payment of twice the standard licence fee under FR 45A or twice the pooled standard licence fee whichever is higher, under the provisions of SR 317-B-22. In the case of a temporary transfer where such retention beyond the normal period of four months permissible under the provisions of SR 317-B-11 is sought for strictly in the circumstances of the public interest i.e. where the officer concerned is given the impression that his transfer or deputation is for a short spell and where that is extended by the Ministry/Department concerned by short period, extensions may be granted by relaxation of the relevant provisions. In such cases of temporary transfer, or deputation, to places outside India, etc. rent for the entire period should be charged as normal rent under FR 45A with the approval of Joint Secretary concerned, Ministry of Works & Housing".

10. In the instant case, admittedly the applicant has left her ailing mother and handicapped sister for having medical treatment in her absence at Calcutta. She was not provided with government accommodation at Calcutta. She had paid licence fee for the flat for the period she was at Calcutta. She was not issued with any show cause notice for unauthorised retention of the flat. When she was transferred to Calcutta, it was for her department to inform the respondent of the fact and also inform her about the flat. Unfortunately this was not done and the applicant can not be faulted for this lapse.

11. The instructions contained in the OMs dated 1.8.88 and 16.9.88 cited supra also go in favour of the applicant. The respondents can not deny her accommodation by simply saying that she is posted in an ineligible office on her transfer back to Delhi when both the hospitals she had worked/she is working come under the umbrella of the Government of India.

12. With regard to the respondents' contention that the instructions contained in the OMs dated 1.8.88 and 16.09.88 are applicable only in case of unauthorised occupation pending as on 20.6.88 whereas the applicant was in unauthorised occupation outside Delhi till 30.6.88 and only with effect from 1.7.88 she has any claim for any regularisation, the applicant's counsel argues that the applicant's transfer order was issued on 17.6.88 but she was relieved only on 30.6.88 due to administrative exigencies and on the next date itself i.e. 1.7.88 she took up her new assignment. Therefore his contention is that had she been relieved on 17.6.88 itself, she could have joined well before 20.6.88 and sought regularisation. Therefore, he points out that, the applicant can not be faulted on this count also. This point is also not disputed by the respondents in their reply. Therefore, there was a delay of only about 10 days, that too not on the part of the applicant but on the part of the AIIHPH, Calcutta, who relieved her on 30.6.88, though the transfer order was actually issued on 20.6.88.

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13. The applicant's counsel draws my attention to the decisions rendered in OA 510/89 dated 27.8.89, OA 999/89 dated 17.10.89 and CWP No.2704/86 dated 19.3.87 of the Delhi High Court, relating to cases of similar nature as that of the applicant. I have seen the copies of these judgements produced by the applicant's counsel. OA 510/89 relates to the case where the applicant, while working as Deputy Adviser, Planning Commission, was sent on deputation to Government of Afganistan from September, 87 to February, 1989 and on his returning back to Planning Commission, the accommodation allotted to him was cancelled. His case was considered by this Tribunal and the respondents were directed to regularise the flat in his name after collecting licence fees from him for the period he was away from India as per extant Rules. Similarly in the case of OA 999/89, the applicant was working as a Scientific Officer and he was sent on deputation to Saudi Arabia for one year and on his coming back to India and joining his duties in his parent office, the flat allotted to him was cancelled. His case also was considered by this Tribunal and again in his case the respondents were directed to regularise the flat in his name. In the case of CWP No.2704/86, the applicant while working in the Ministry of Communication, was deputed to Saudi Arabia for a period of 3 months and on his return he found the flat allotted to him was cancelled. However, the Delhi High Court after considering his case, quashed the cancellation order and eviction order. Incidentally, it is also seen from OA 815/90 decided on 10.9.93 that Faculty Members of MAMC are eligible for General Pool accommodation.

14. Therefore, after considering all the aspects involved in the instant case viz., the request of the Principal, MAMC (Annexure B) to R-1 to the effect that the licence fee for the flat in question was being deduced from the applicant's salary and therefore she may be allowed to retain that flat and a Hospital Pool flat of that type would be placed at the disposal of R-1 in lieu of that, she had paid the licence fee and other extra charges imposed by R-1 for the flat while she was posted at Calcutta and she has been still paying the normal licence fee after her return from Calcutta and in view of the instructions contained in Directorate of Estate's OM dated 16.2.79 cited supra in para 6 and also following the reasoning referred to in the above mentioned cases, I have no hesitation to hold that the applicant has made out a case. In the circumstances, I allow this OA. The impugned orders dated 20.12.89 and 6.4.93 are quashed and set aside. The respondents are directed to regularise the flat in the name of the applicant on payment of licence fee by the applicant as per extant rules, if not already paid by her, within a period of two months from the date of receipt of this order by them. The OA is thus disposed of. Parties are to bear their own costs.

(C.J. Roy)
Member (J)

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