

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

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OA 2161/93, OA 2182/93 & OA 2183/93

NEW DELHI THIS THE 6<sup>th</sup> DAY OF JULY, 1994.

MR. JUSTICE S.K. DHAON, ACTING-CHAIRMAN (J)  
MR. B.K. SINGH, MEMBER (A)

(1) OA No. 2161/93

Smt. Surinder Talwar  
wife of Shri K.K. Talwar,  
R/o Quarter No. B-54, Pandara Road,  
New Delhi. ... APPLICANT  
BY ADVOCATE SHRI B. KISHAN.

Vs.

1. Union of India, through the  
Director Estates,  
Directorate of Estates  
4th Floor, 'C' Wing, Nirman Bhavan,  
New Delhi-110 011.
  2. The Secretary,  
Public Works Department,  
Government of National Capital Territory Delhi  
'A' Block, Vikas Bhavan, Indraprastha Estates,  
New Delhi-110 002. ... RESPONDENTS
- NONE FOR THE RESPONDENTS.

(2) OA No. 2182/93

(1) Smt. Sushila Srivastava  
Wife of Shri G.N. Srivastava  
R/o B-35 Pandara Road, New Delhi.

(2) Shri G.N. Srivastava  
S/o Shri B.N. Verma  
R/o B-35 Pandara Road, New Delhi.... APPLICANTS  
BY ADVOCATE SHRI B. KISHAN.

vs.

- (1) Union of India, through the  
Director of Estate  
Directorate of Estates,  
4th Floor 'C' Wing,  
Nirman Bhavan,  
New Delhi.
  - (2) The Secretary,  
Public Works Department  
Government of National Capital Territory of Delhi,  
(Earstwhile Delhi Administration, Delhi)  
'A' Block, Ground Floor, Vikas Bhavan,  
Indra Prashta Estate,  
New Delhi-110 002. ... RESPONDENTS
- NONE FOR THE RESPONDENTS.

(3) OA No. 2183/93

Kumari Sunita Rani,  
D/o Shri Raja Ram  
R/o Quarter No. 2003,  
Lodi Road Complex  
New Delhi. ... APPLICANT  
BY ADVOCATE SHRI B. KISHAN.

Vs.

1. Union of India, through the

Directorate of Estates,  
'C' Wing, 4th Floor,  
Nirman Bhavan, New Delhi-110 011.

The Secretary,  
Land & Building Department  
Government of National Capital Territory of Delhi  
(Earstwhile Delhi Administration, Delhi)  
'A' Block, Vikas Bhavan, Indraprashta Estate  
New Delhi-110 002. ... RESPONDENTS

BY ADVOCATE SHRI AMRESH MATHUR.

ORDER

**JUSTICE S.K.DHAON:**

The common question to be decided in these three applications is whether the teachers of Government institutions under the Directorate of Education of the Delhi Administration are entitled to allotment of Government residences (General Pool in Delhi) or regularisation of the occupation of the same. These applications have been heard together. Therefore, they are being disposed of by a common judgement.

2. We have before us, the Allotment of Government Residences (General Pool in Delhi) Rules, 1963. Certain expressions have been defined in the said Rules. It appears that the Rules are a mere skeleton and they have been supplemented by Office Memorandas from time to time. We are concerned with the meaning of two expressions. Unless the context otherwise requires, 'Director of Estates' is defined to mean the Director of Estates to the Government of India and includes Additional, Deputy and Assistant Director of Estates; and "Eligible Offices" is defined to mean a Central Government Office, the staff of which has been declared by the Central Government eligible for accommodation under the Rules. We may state at once that it is not the case of the applicants that the Directorate of Education of the Delhi Administration is a Central Government Office and it is also not their case that the staff of the Directorate of Education of the Delhi Administration has been declared by the Central Government

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eligible for accommodation under the Rules. However, it has merely been stated that the Directorate of Education of the Delhi Administration is entitled to be allotted and is being allotted a Government residence from the general pool.

3. Reliance has been placed by the applicants upon D.E.O.M.No.12024(2)/67-Pol.II dated 2.4.1976. The subject of this OM is "Eligibility for allotment of accommodation from the general pool of the employees of the Delhi Administration-withdrawal of the ban." the contents of the said Office Memorandum, as material, are that the employees of the Delhi Administration working in offices located within the eligibility zones may be allotted accommodation till further orders from the general pool. This is in relaxation of the orders contained in Memorandum of even number dated 1.8.1974. Allotments will be made subject to the conditions enumerated therein. We are concerned with the third condition, which may be extracted:

" Because of the ban, ad-hoc allotments to dependents of retiring employees of the Delhi Administration (and of Central Government employees if their dependants are working in the Delhi Administration) had been stopped, such eligible dependents may now be considered on merits for ad-hoc allotments, if otherwise eligible."

(underlined by us)

4. The applicants have themselves produced a copy of Office Memorandum No.12035(7)/79-Pol.II dated 1.5.1981 of the Director of Estates. The subject of this Office Memorandum is "Concession of ad-hoc allotment of General Pool Accommodation admissible to eligible dependents/relations of Govt.employees on their retirement."

5. We are focusing on the contents of the said Office Memorandum, as material to the present controversy. It is recited therein that in exercise of the powers conferred under S.R.317-B-25 of the Allotment of Government Residences (General Pool in Delhi) Rules,

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In 1973, the Central Government have decided that when a Government servant, who is an allottee of General pool accommodation, retires from service, his/her son, married daughter or wife or husband, as the case may be, may be allotted accommodation from the general pool on ad-hoc basis, provided the said relation is a Government servant eligible for allotment of accommodation in general pool and had been continuously residing with the retiring Government servant for at least three years immediately preceding the date of his/her retirement. Then comes, the crucial condition in paragraph 4 which runs:

" The above concession will, however, be not available in cases where the retiring officer or the member of his family owns a house in the place of his/her posting."

6. From a reading of the Office Memorandum dated 2.4.1976 and the Office Memorandum dated 1.5.1981, it appears that in both of them, the relations of a Government servant seeking allotment or regularisation of a Government accommodation must be eligible for allotment. For finding out the eligibility, we have to revert to the definition of "Eligible Offices", referred to above. The applicants have not placed any material on record to indicate either expressly or impliedly that they fall within the four corners of the expression "Eligible Offices" as defined in the Rules aforementioned. We have, therefore, no option but to hold that the applicants are not eligible for accommodation in general pool.

7. We may now deal with the individual cases. In OA No. 2183/93 (Kumari Sunita Rani) has averred: Her father, Shri Raja Ram had been allotted a Government residence bearing No. 2003, Lodi Road Complex, New Delhi. He retired from service with effect from 31.1.1992. Since 12.10.1989, she has been working as a Trained Graduate Teacher

in Government Girls Senior Secondary School, Bor Bagh, New Delhi. She has not drawn any House Rent Allowance right from the date of joining service. She is eligible for allotment of a Type 'B' accommodation according to the salary she is drawing in the scale of Rs.1400-2600. She is entitled to such accommodation from the general pool as well as from the Delhi Administration Pool. She is also entitled to the same type of accommodation which is under her occupation after the retirement of her father. Her cadre controlling authority is the Directorate of Education, Delhi Administration and the Directorate of Education has been declared as eligible for allotment of the Government accommodation from the general pool. On 24.2.1992, she made an application for the regularisation of the accommodation under her occupation. She also made another application on 6.6.1992 for allotment of alternative accommodation from the Delhi Administration Pool. The competent authority in the Delhi Administration vide its letter dated 19.2.1993 communicated a decision of the Delhi Administration that the Delhi Administration was prepared to place one Type 'B' quarter at the disposal of the Director of Estates in case the said accommodation No.2003, Lodi Road Complex, New Delhi is regularised in the name of the applicant. On 19.4.1993, she reiterated her request for the regularisation of her occupation of the accommodation at Lodi Road Complex, New Delhi. Her request was forwarded by a Member of the Parliament.

8. The reliefs sought are these:

- (1) The allotment of Government accommodation at 2003, Lodi Road Complex, New Delhi may be directed to be regularised in the name of the applicant with effect 1.6.1992 i.e. from the date of effective cancellation in the name of the father of the applicant on normal terms.



(2) In the alternative, the relevant authority in the Delhi Administration may be directed to allot an alternative accommodation to the applicant and till such time the alternative accommodation is allotted the applicant may be allowed to continue in Quarter No.2003, Lodi Road Complex, New Delhi on normal licence fee.

9. Annexure 'A1' to the original application is a copy of the letter dated 24.2.1992 given by Shri Raja Ram, the father of the applicant, to <sup>the</sup> Hon'ble Union Minister in the Ministry of Housing and Urban Development praying therein that the accommodation under his occupation may be allotted or transferred to his daughter (the applicant).

10. Annexure 'A-2' is a true copy of the letter addressed to the Minister concerned.

11. Annexure 'A-3' to the OA is a copy of the letter dated 19.2.1993 of the Under Secretary (Allotment) of the Government of National Capital Territory of Delhi Land and Building Department addressed to the Director of Estate, Ministry of Urban Development. It is stated therein that the Delhi Administration is agreeable to place a quarter of Type 'B' at the disposal of Directorate of Estate in lieu of Lodhi Road flat if allotted to the applicant.

12. Annexure 'A-6' is a copy of the letter 21.5.1993 from the applicant to the Directorate of Estates stating therein that she has been allotted a Type 'B' quarter by the Delhi Administration and has been placed at the disposal of the office of the Directorate of Estates in lieu of Quarter No.2003 Lodi Road Complex, previously allotted to her father. She pleaded that accommodation at the Lodi Road Complex may be allotted to her.

13. Annexure 'A-8' is a copy of the letter dated 8.6.1993 of the applicant to the Secretary/Commissioner, Land and Building Department stating therein that she is

entitled to /Type 'C' quarter. She prayed that she may be considered for special sanction for allotment of Delhi Administration quarter /Type 'C' in Karkar Duma. (17)

14. Annexure 'A-10' is a copy of the order alleged to have been passed by the Estate Officer in the purported exercise of the power under sub-section(1) of Section 5 of the Public Premises(Eviction of Unauthorised Occupants)Act,1971 directing Shri Raja Ram to vacate Quarter No.2003 Lodi Road Complex within a specified time.

15. Annexure 'A-11' is a copy of the order dated 13.9.93 of the Additional District Judge Delhi passed in P.P.A. No.276/93 in the appeal preferred by Shri Raja Ram, the father of the applicant. In para 3 of the order, it is recited that the appellate authority does not find any infirmity, illegality or irregularity in the order passed by the Estate Officer. It is further recited:

" The appellant had however given a solemn undertaking to vacate the public premises by the evening of 10th Oct.1993 and seeking retention till then on compassionate grounds. In my opinion, acceptance of the undertaking would be in the interest of justice as it would give a finality in the eviction proceedings.

In view of the aforesaid while upholding the eviction order I dispose off the appeal by permitting the appellant to vacate the premises by the evening of 10th Oct.1993 in terms of his undertaking...."

16. It is noteworthy that in this OA neither Shri Raja Ram has joined as one of the applicants nor the legality of the eviction proceedings has been challenged. The father of the applicant is bound by the solemn undertaking given by him before the learned Additional District Judge to vacate the Government accommodation by 10th October, 1993.

17. The Delhi Administration has already allotted an accommodation of Type 'B' to the applicant. She, however, appears to be dissatisfied by the said accommodation and is claiming Type 'C'. We have already

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that the applicant is not entitled to be allotted an accommodation from the general pool. It is urged that we may direct the Director of Estates to agree to the inter-pool exchange of the accommodation as offered by the Delhi Administration. We have before us, the Office Memorandum dated 3.11.1993, issued by the Directorate of Estates. In para 2 thereof it is stated that inter-pool exchange will be permitted in the cases enumerated therein. Five type of cases are mentioned. We have carefully considered each one of them and we find that none of them is applicable to the case of the applicant. We are, therefore, unable to give a direction to the Director of Estates to accept the offer made by the Delhi Administration. We, however, make it clear that it is still open to the Director of Estates to exercise his own discretion in the matter. While doing so, he shall not be influenced by any observation made by us hereinabove.

18. In OA No.2182/93, there are two applicants before us. Applicant No.1 is Smt.Sushila Srivastava wife of Shri G.N.Srivastava. Applicant No.2 is Shri G.N. Srivastava. The material averments in the OA are these. Government residence bearing No.B-35, Pandara Road, New Delhi was allotted to applicant No.2 who was in Government service. On 30.11.1992, he retired from service. With effect from 1.4.1993, allotment in his favour had been cancelled. Since 28.7.1960, applicant No.1 has been employed as a Post Graduate Teacher in the Government Girls Senior Secondary School, Minto Road, New Delhi under the Directorate of Education, Government of National Capital Territory Delhi (erstwhile Delhi Administration). She has been sharing the Government accommodation with applicant No.2 since 1975 and she has not drawn any House Rent Allowance since then. She is entitled to allotment of a Type 'D' accommodation from the Delhi

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Administration pool as well as the general pool. Her request for allotment/regularisation of the Government accommodation at Pandara Road has been rejected. A number of teachers in Delhi Administration have been allotted Government accommodation from the general pool (para 4.9 of the OA). Eviction proceedings in relation to Government accommodation at Pandara Road are going on before the Estate Officer.

19. The reliefs claimed are these:

- (1) The allotment of Government residence No. B-35 Pandara Road, New Delhi may be directed to be regularised in the name of applicant No. 1 with effect from the date of cancellation in the name of applicant No. 2 i.e. 1.4.1993 or normal terms.
- (2) In the alternative, respondent No. 2 may be directed to place one Type 'D' accommodation from their own pool in the general pool and the present accommodation in Pandara Road may be directed to be taken in Delhi Administration Pool for regularisation of allotment of the same in the name of applicant No. 1 from 1.4.1993.
- (3) The applicants may not be liable to pay any sort of damages/market rent/penal rent etc. in respect of the Government residence at Pandara Road and the impugned demand of damages be quashed.

20. We may note that in this original application, there are only two respondents. The first is the Union of India through the Director of Estates and the second is the Secretary, Public Works Department, Government of National Capital Territory of Delhi. The Estate Officer (the prescribed authority under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971) is not cited as one of the respondents. We may also note that the documents produced before us really indicate that a show-cause notice under Section 4(1) of the aforesaid Act has so far been given to the applicants by the Estate Officer. This notice does not indicate that any damages are being claimed from the applicants. Nothing has been brought to our notice to indicate that the final order of eviction has been passed by the Estate Officer under

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Section 5(1) of the aforesaid Act.

20. We may straightaway deal with the request of the applicants that we may direct the relevant authority in the Delhi Administration to place a suitable accommodation at the disposal of the Directorate of Estates so that inter-pool exchange may take place. It cannot be considered for the reasons given by us in the case of OA No.2183/93(Kumari Sunita Rani).

21. Annexure 'A-5' to the original application is the copy of a communication dated 21.12.1992 of the Assistant Director of Estates to the Section Officer, Central Health Education Bureau, Directorate of Health Services. The subject of this communication is "Cancellation of allotment of Qr.No.B-35, Pandara Road in the name of Shri G.N. Srivastava". In para 2 of this communication, it is stated that Shri G.N.Srivastava may be directed to hand over vacant possession of the aforesaid quarter before 1.4.1993 positively failing which necessary action to evict him under the Public Premises(Eviction of Unauthorised Occupants)Act,1971 will be taken. It is also stated therein that in accordance with SR-317-B-

22. Shri G.N.Srivastava is also liable to payment of damages @ Rs.40/-per square meter of the covered area in respect of the entire premises for the period of overstay. In para 4, it is recited that the request of Smt. Sushila Srivastava(applicant No.1) for regularisation of the quarter in her name has been considered very carefully but the same can not be accorded to under the Allotment Rules as she is a teacher in Delhi Administration and her husband is a house-owner.

22. We have already stated that a teacher in the Delhi Administration is not an eligible person so as to entitle him to allotment of a Government residence from the general pool. The Office Memorandum of 1.5.1981, the relevant portion of which has been referred to above,

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4) clearly stipulates that/dependent of a Government servant cannot be allotted a Government residence at all if the Government servant concerned or a member of his family owns a house at the place where the allotment is sought. In the original application, there is not even a whisper that Shri G.N.Srivastava, husband of applicant No.1, does not own a house in Delhi. (21)

24. Damages cannot be recovered from an unauthorised occupant by force. Recourse has to be taken to legal proceedings and in those proceedings it is always open to a Government servant to raise the issue of quantum of rent/damages payable. If such a dispute is raised, the authority, Court/Tribunal, hearing such a matter, will be under an obligation to examine the issue on merits and in accordance with law. These observations, in our opinion, are sufficient to safeguard the interest of the applicants in so far as the realisation of damages from them is concerned.

25. In view of the foregoing discussion, we are unable to grant any relief to the applicants.

26. In OA No.2161/93 (Smt.Talwar ) only two respondents are cited. They are: (1) Union of India through the Director of Estates, Directorate of Estates, New Delhi.

(2) The Secretary, Public Works Department, Government of National Capital Territory Delhi. The material averments are these. Shri K.K.Talwar, the husband of the applicant was allotted a Government residence bearing No.B-54, Pandara Road, New Delhi (Type 'D'). He retired from service with effect from 31.3.1993. Allotment in respect of the said premises has been cancelled in the name of her husband with effect from 31.7.1993 and a levy of damages at the rate of 45/-per square metre of the living area has been imposed on account of the unauthorised occupation with effect from 1.8.1993. The applicant has been employed as a teacher in the Delhi Administration since 4.8.1967. Since 8.8.1993, she has

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 been sharing the residence with her husband and has not been drawing any House Rent Allowance .She gets the emoluments at the rate of Rs.2900/- per month which entitles her to get an allotment from the general pool as well as the Delhi Administration Pool of Type 'D' category. She is employed under the Directorate of Education. Her request for allotment/regularisation has been rejected for two reasons:

- (1) she is a teacher in a Government school.
- (2) her husband is a house owner.

So far as the first ground is concerned, a number of teachers working in the Delhi Administration have been allotted Government residences from the general pool. There is a reciprocal arrangement between the Delhi Administration and the general pool authority to allow exchange of pool for accommodating a particular officer. House owning is not a bar for allotment from either of the two pools. No body dependent upon her is a house owner in Delhi. The case of the applicant has been referred to the Litigation Wing of the Directorate of Estates for carrying out physical eviction on final rejection of her request for regularisation of allotment of the aforesaid accommodation.

27. The prayers are:

- (1) The allotment of the Government residence bearing No.B-54, Pandara Road, New Delhi may be directed to be regularised in the name of applicant with effect from the date of cancellation in the name of her husband with effect from 1.8.1993 on normal terms.
- (2) In the alternative, the respondent No.2 may be directed to place one Type 'D' accommodation from their own pool in the general pool and the present accommodation in Pandara Road may be directed to be taken in Delhi Administration Pool for regularisation of allotment of the same in the name of the applicant.
- (3) The applicant may not be made liable to payment of any damages/penal rent/market rent etc. in respect of the said accommodation and the impugned demand may be quashed.

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28. Annexure 'A-4' to the OA is the communication dated 15.9.1993 of the Assistant Director of Estates to the Assistant Civilian Staff Officer. The subject of this communication is "Cancellation of allotment of Qr.No.B-54, Pandara Road, New Delhi in the name of Shri K.K.Talwar." In para 4, it is stated that the request for regularisation of aforesaid quarter could not be acceded to as Shri Talwar is a house-owner and his wife is a teacher in a Government school and, therefore, she is not eligible to be allotted a general pool accommodation.

29. It is not denied by the applicant in the original application that Shri K.K.Talwar does not own a house in Delhi.

30. In view of the above discussion, the applicant is not entitled to be allotted a Government residence from the general pool on two counts. The first is that the applicant is a teacher in the Delhi Administration and the second is that her husband owns a house in Delhi.

31. For the reasons stated above, the second prayer that the Delhi Administration may be directed to place one Type 'D' accommodation at the disposal of Directorate of Estates for inter-pool exchange cannot be accepted. However, we make it clear that it will be open to the Delhi Administration to consider the request of the applicant for being allotted a suitable accommodation from its pool. We also make it clear that it will be in the discretion of the Director of Estates to consider the feasibility and desirability to allow an inter-pool exchange if an accommodation is allotted to the applicant by the Delhi Administration.

32. Neither the Directorate of Estate nor its agencies can take the law into their own hands and they/ cannot evict the applicants from the accommodation in their

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occupation except in accordance with law. Even for the purpose of realising damages they will have to take

recourse to legal proceedings and in those proceedings it will be open to the applicants to raise a dispute in regard to the claim/damages payable. This is enough to safeguard the interest of the applicants. The applicants are not entitled to any other relief.

32. We may now deal with the allegation that some teachers of the Delhi Administration had been in the past allotted accommodation from the general pool. We have before us, the Office Memorandum dated 27.12.1991 of the Directorate of Estates. The subject is "Regarding allotment of general pool accommodation to teachers/ other staff working in the schools of Delhi Administration." It is stated therein that in accordance with the Allotment of Government Residences (General Pool in Delhi) Rules, 1963, allotment of accommodation from general pool is made to the staff of offices declared specifically eligible by the Central Government. The teachers of schools of Delhi Administration were never declared eligible as such. However, since the Directorate of Education, Delhi Administration is an eligible office, certain allotments have been made in the past to the teachers and other staff working in schools as their applications were forwarded by the Directorate of Education (Delhi Administration). Some allotments have also been made on the basis of certificates issued by Delhi Administration or the Principals of schools that the staff concerned was working in an eligible office located in eligible zone.

34. In para 2 of the aforesaid memorandum, it is stated that the teachers and other staff working in the Govt. schools in Delhi Administration have been representing for declaring them eligible and for allotting them a suitable eligibility code. The matter has been considered keeping in view the fact that the Delhi Administration

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decided by a two-member-Bench of the Principal Bench of this Tribunal on 13.5.1991. This decision does not advance the case of the applicants at all. It is held that the S.R.General Rules do not provide for the allotment of accommodation from the general pool to the employees of Videsh Sanchar Nigam Ltd., who are on deputation.

(ii) OA No.831/90(B.Narain Sharma & Anr. vs.Union of India & ors.) decided on 15.5.1991 by the Principal Bench of this Tribunal. This was a case where a teacher in the Government school in New Delhi retired with effect from 1.9.1989. The son (applicant No.1) had been working as a Yoga Teacher under the Delhi Administration since 10.1.1983. Both the father and the son were the employees of the Delhi Administration. The father had been allotted a Government, accommodation and upon his retirement the son made a prayer for the allotment of the accommodation in his favour on the ground that he was residing with his father and sharing accommodation with him. The order dated 15.1.1990 passed by the Directorate of Estates refusing to regularise the accommodation in favour of the son was quashed and the respondents in the OA were directed to regularise the accommodation in the name of the son. It is to be seen that in said OA, the impugned order was passed on 15.1.1990 when the Office Memorandum dated 27.12.1991 had not seen the light of the day. This case, therefore, does not help the applicants.

(iii) OA No.160/91(Shri Anil Kumar Singh vs.Union of India & Ors.) decided on 8.7.1992 by a learned Single Member Bench of this Tribunal. In this case the father was a teacher in the Delhi Administration.

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has its own pool of accommodation which also caters to the teachers and other staff of the schools under Delhi Administration. The factual position that certain allotments have already been made erroneously in the past to the teachers and a number of such allottees are already registered for in turn change etc. has also been noted. After careful consideration, it has now been decided that the teachers and other staff of the schools of Delhi Administration will not be eligible for initial allotment (inturn as well as ad hoc) from general pool in Delhi. However, the allotments already made to them by the Directorate of Estates will not be disturbed and will continue to be treated as lawful allotments.

35. In view of the clear admission made in the Office Memorandum dated 27.12.1991 that in the past allotments had been made erroneously in favour of the teachers of the Delhi Administration, the argument based on violation of Article 14 of the Constitution is a misplaced one. No Court/Tribunal can enforce the equality clause of the Constitution by directing an inferior authority to act in violation of the law. The Office Memorandum dated 27.12.1991 has taken good care to point out that the past transactions will not be reopened and, therefore, the allotments made in the past to the teachers shall be deemed to be valid. In these circumstances, two distinct classes of teachers came into existence. (1) who had been allotted Government accommodation from the general pool on or before 27.12.91 and (2) who had not been allotted Government accommodation for after the said date on account of the operation of the said Memorandum.

36. Reliance has been placed by the learned counsel for the applicants on a number of decisions. They are:

(1) No. 1713/87 (General Secretary, Videsh Sanchar Nigam Ltd. Employees Union vs. Union of India & ORS)

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While in service, he was allotted a Government accommodation. The son too was a teacher in the Delhi Administration. On the eve of the retirement of his father, the son applied for allotment/regularisation of the Government accommodation wherein he was residing along with his father. During the pendency of the application for regularisation, proceedings for eviction were initiated under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and the said OA was filed. The learned Member held that in view of the facts and circumstances of the case, action under the Public Premises Act, 1971 was not sustainable and was not justified. The respondents were directed to regularise the occupation of the Government accommodation in favour of the son with a further direction that normal licensed fee be realised from the son from the date of superannuation of the father. The proceedings of rejection or for levying penal rent were also quashed. On facts this case is distinguishable. This was a case where a teacher had already been allotted a Government accommodation from the general pool and the controversy centred round the regularisation of the occupation of the said accommodation by his son who also happened to be a teacher. Though no reference has been made to the Office Memorandum dated 27.12.1991, the decision given by the learned Member of this Tribunal appears to be in conformity with para 4 of the said Office Memorandum. (S)bis

(iv) OA No.2527/92 (Smt.S.S.Madan & anr.vs.Union of India & Ors.) decided on 16.8.1993. The facts of this case, as material, are these, Mrs.Madan and Mr.Madan are applicants (1) and (2) respectively. Mr.Madan had been allotted Government accommodation from the general pool. He was eligible to be allotted

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such an accommodation. He retired from service on 30.11.1991. On 6.12.1991, Mrs. Madan made an application for the regularisation of her occupation of the said accommodation. She could not apply for allotment of a suitable accommodation to the Delhi Administration on account of the operation of SR 317-B-4 which ran as follows:

" No officer shall be allotted a residence under these rules if the wife or the husband, as the case may be, of the officer has already been allotted a residence, unless such residence is surrendered."

Reliance was placed upon the Office Memorandum dated 27.12.1991. We took note of the fact that prior to 27.12.1991, a number of teachers who were similarly situated as Mrs. Madan had been allotted Government accommodation from the general pool or their occupation thereto had been regularised. We observed:

" Had it been issued earlier, Mrs. Madan could have applied to Delhi Administration for allotment of a house in her own right. Also it clearly mentions that certain allotments have already been made in the past to the teachers of Delhi Administration and provides that allotment already made will not be disturbed and will continue to be treated as lawful allotments. The Directorate of Estates has clarified in this regard that the teachers and other staff of schools of Delhi Administration will not be eligible for initial allotment from General Pool in Delhi. A similar issue was raised in OA No.1226/91 which was decided on 19.5.1993 by a Single Member Bench of which one of us (Sh. B. N. Dhoundiyal, Member (A)) was a Member. It was held that though O.M. dated 27.12.1991 prohibits the allotment from the General Pool Accommodation to the teachers working under the Delhi Administration, prior to this date allotments were being made to them. In this case also, applicant No.1 is a Selection Grade Trained Graduate Teacher of Delhi Administration working since November, 1960 and entitled to Type-D accommodation. She has not been paid any house rent allowance by Delhi Administration. Since she could not have applied for separate govt. accommodation for herself while sharing a quarter allotted to her husband, it will be too much to ask her to apply now for allotment of accommodation from Delhi Administration after surrendering the present General Pool accommodation, particularly in view of the fact that she is on the verge of retirement."

The applicants cannot derive any advantage from the

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decision given in Smt. Madan's case.

37. These original applications fail and are dismissed but without any order as to costs.

(B. SINGH)  
MEMBER(A)

(S.K. DHAON)  
ACTING-CHAIRMAN(J)

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Attended (no copy)

Audhmalai

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C.A.T. N.D.

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