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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : PRINCIPAL BENCH

OA No.2336/1993

NEW DELHI, this 1st day of MARCH, 1994.

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

Shri P.K. Jain
UDC, Min. of Home Affairs
Cash II Section, Room No.18C-
North Block, New Delhi

Shri V.P. Jain
E-393, Dev Nagar
New Delhi-110 005

.. Applicants

By Shri V.S.R. Krishna, Advocate

Versus

Union of India, through

1. The Director of Estates
Nirman Bhavan, New Delhi

2. The Secretary
Min. of Home Affairs
North Block, New Delhi

.. Respondents

By Shri P.P. Khurana, Counsel

O R D E R

The applicant has assailed the the orders dated 17.9.93 and 7.10.93 by which damage rent/arrears of rent were liable to be recovered from the gratuity payable to Applicant No.2 in respect of Quarter No.E-393, Dev Nagar allotted to him while he was in service and also directing the applicant to collect the authority slip for quarter No.26-S, S-IV, DIZ Area after clearing the dues of his father (Applicant No.2).

2. Briefly stated, the facts of the case are that the applicant's father was allotted Qr.No.E-393, Dev Nagar, while he was working as Teacher with Delhi Admn., who retired from service from 1.3.90, and the applicant working in the Min. of Home Affairs was residing with his father. The applicant claims he has not been drawing HRA since 1985. He made an application for allotment of

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quarter in his name on 19.3.90, on the retirement of his father, enclosing therewith the certificate to the effect that he was not drawing HRA since 6.5.86. He says he was told to continue in the present quarter until further orders. Having received no response, he appealed again on 3.2.92 for regularisation of the present quarter in his name or allotment of alternate accommodation. He says by his letters dated 20.4.93 and 16.8.93, he furnished more clarification sought for by the respondents. But the respondents issued the impugned order dated 17.9.93 proposing damage rent to be recovered from the dues of his father.

The applicant made an appeal on 22.9.93 explaining his position and the respondents issued order dated 28.9.93 allotting him Qr.No.26-S, Sector IV, DIZ Area which the applicant has accepted. But instead of getting possession slip for the said quarter, the applicant was issued with order dated 7.10.93 directing him to pay the dues of his father to get the possession slip. The applicant made an appeal on 8.10.93 and on 11.10.93 against this, but of no avail. Hence aggrieved, the applicant has filed this OA claiming following reliefs:

- 1) Quashing of orders dated 17.9.93 and 7.10.93
- 2) Charging of normal licence fee for the quarter allotted to his father from the date of his retirement till the applicant's date of shifting to new quarter; or
- 3) to regularise the quarter allotted to his father in his name on normal licence fee.

3. The respondents have not filed their reply. However Shri P.P.Khurana appearing for the respondents argued the case verbally. Also it is seen from the order dated 22.11.93 that it is held by another Bench that if the respondents fail to present themselves on 10.12.93, this case will be heard on the basis of the material on record.

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4. I have heard the counsel for the parties and perused the records. MA.3355/93 is filed/^{praying}for joining together in one OA which is heard and allowed.

5. The case of the applicant is that he has been living with his father in the accommodation allotted to him, that he has not been drawing HRA since 6.5.86, i.e. the date of his joining the Government service, while his father superannuated from Govt. service on 28.2.1990. He has quoted OM dated 27.12.91 of the Directorate of Estates, that deals with allotment of general pool accommodation to teachers of Delhi Administration. It is seen from that OM that the allotments made to the teachers of Delhi Administration by the Directorate of Estates will not be disturbed and will continue to be treated as lawful allotment. The learned counsel for the applicant also drew my attention to the OMs dated 1.5.81 and 19.11.87 regarding "allotment of Govt. quarters to dependents of Government employees on their retirement", This OM reads as under:

"When a Government servant in occupation of Government residence retires from service, his son/unmarried daughter may be allotted Govt. residential quarters on ad hoc basis subject to the following conditions:

1. The dependent/relation should be Govt. servant eligible for allotment of Govt. residence;
2. He should submit an application to the authority competent to allot the accommodation in the prescribed form along with an affidavit from the retired Govt. servant.
3. He should have been residing continuously with the retiring Govt. servant for atleast three years immediately preceding the date of retirement of the Govt. servant. During the same period of three years he should not have been drawing HRA. The condition of non-drawal of HRA is applicable only in cases where the dependent is employed in the same station and residing with the official in the same Government accommodation."

Admittedly, the applicant in this case fulfills all the above conditions.

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5. The case of the applicant is that he has been residing with his father in the quarter allotted to him and that he has not been drawing HRA from 6.5.86. It is also averred by him that the letter dated 28.9.93 allotting him Qr.No.26-S/Sector IV, DIZ area does not impose any pre-conditions before issuing possession slip. It is undisputed.

6. As averred by the applicant, the order dated 7.10.93 also does not quantify the amount to be paid by his father in respect of the quarter allotted to him.

7. It is the claim of the applicant that he represented for allotment of alternative accommodation immediately after the retirement of his father - who retired on 28.2.90 - and he has been approaching the respondents regularly by supplying all the relevant information/clari-
fication required by them. He claims that the delay was caused purportedly on the ground that the concerned file relating to allotment was destroyed by the monkeys or that no decision could be taken since it was a policy ^{as has been alleged at para 5(b) of the OA.} matter. However, in the absence of counter reply from the respondents, for which ample opportunity was afforded to them, or admission/denial by the learned counsel appearing for the respondents, no comments can be given on this point. It is seen from various representations of the applicant that he has undertaken to clear all the dues of his father as and when the same is intimated to him.

8. When the applicant has been residing with his father in the quarter allotted to his father for more than four years prior to his retirement, when he has not been drawing HRA from 6.5.86 on his joining the Government service, when he is entitled to Govt. accommodation as per the OMs referred to supra, it was incumbent on the part of the respondents to have taken appropriate action in allotting entitled accommodation to the applicant,

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instead of keeping the applicant in dark. On the other hand, they have intimated the applicant about the ad hoc allotment only in 1993. Also, neither the allotment letter dated 28.9.93 imposes any pre-condition before issuing the authority slip nor the order dated 7.10.93 quantifies the amount to be paid in cash by his father.

9. In the circumstances, I have no hesitation to hold that the applicant has made out a case for interference. The application is allowed and the impugned orders dated 17.9.93 and 7.10.93 are quashed and set aside. The respondents are directed not to dispossess the applicant from the quarter No.E-393, Dev Nagar untill he is allotted his entitled quarter and the same is regularised in his name and he takes over possession of the same. The respondents are also directed to recover only the normal licence fee for this quarter for the period from the date his father retired from service till the applicant takes over possession of the quarter to be allotted to him. This exercise may be completed within two months from the date of receipt of this order by the respondents.

The application is disposed of with the above direction.

No costs.

[Signature]
(C.J. Roy)
Member (J)

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