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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

D.A. No. 2379/93

New Delhi this the 14th day of January 1994

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

Shri N.R. Rana,
S/o Late Shri G.D. Rana,
21/III, N.H. IV,
Faridabad. Applicant

(By Advocate Shri S.S. Tiwari)

Versus

1. Union of India through
The Secretary,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi.

2. The Director of Estates,
Nirman Bhawan,
New Delhi.

3. The Estate Officer and
Asstt. Estate Manager,
Ministry of Urban Development,
N.H. IV, Faridabad. Respondents

(By Advocate Shri P.P. Khurana)

O R D E R

Hon'ble Mr. J.P. Sharma, Member (J)

The applicant was allotted a Type III Government accommodation in 1981 at Faridabad. He was transferred to Patna Collectorate in August 1991. On account of the illness of his daughter he was allowed the retention of the quarter upto 30.4.1992. His subsequently request was not allowed. He was issued a showcause notice under Public Premises Eviction of Unauthorised Occupant Act, 1971. The applicant filed the reply to the said showcause notice and by the order dated 21.4.1993 the Estate Officer under Section 5(1) of the Public Premises Eviction of Unauthorised Act, 1971 as amended in 1980 passed the order of eviction from the quarter No. 21/III

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N.H. 4 Faridabad. His further request for retention/regularisation of the quarter was also rejected by the order dated 23.8.1993.

2. In the present application filed on 4.11.1993 the applicant assailed both these aforesaid orders and prayed for the grant of the reliefs for quashing the aforesaid orders with the request that the respondents be directed to charge only twice the normal fee instead of damage/market rent and the adhoc allowance or regularisation of the same accommodation be made in favour of the applicant on the medical grounds.

3. A notice was issued to the respondents to file the reply and contested the application opposing the grant of the reliefs prayed for. It is stated that the applicant was allowed to retain the accommodation at Faridabad in the year 1987 when he was transferred to Delhi. Subsequently, he was transferred to Central Excise Delhi to Patna (Bihar) and was relieved from his duties on 9.8.1991. The allotment of quarter No. 21/III was cancelled with effect from 8.10.1991 on account of transfer of the applicant from Delhi to Patna. He was allowed retention for six months as provided under Rules on medical grounds i.e. from 9.10.1991 to 8.4.1992 on payment of twice the rent. The applicant failed to vacate the quarter so action for eviction was taken under Public Premises Eviction of Unauthorised Occupants Act and after giving due opportunity to the applicant the eviction order was passed on 21.4.1993. The applicant was transferred from Patna to Central Excise, Delhi and joined his duties on 19.6.1993. The applicant thereafter appealed to the Director of Estate and the appeal was rejected on 23.8.1993. The applicant, therefore, is an unauthorised occupant and the application is devoid of merit.

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4. The applicant has also filed rejoinder reiterating the averments made in the application. It is further clarified that the applicant was transferred from Faridabad to Delhi and he was allowed to retain the quarter till he is allotted an alternate accommodation in Delhi. The applicant has paid Rs. 4,000/- out of the outstanding amount of Rs. 26,868/-. It is further stated that under the provisions of SR-370-B-25 the government accommodation can be allowed to be retained on medical grounds. The applicant has also referred to the case of Mohan Chandra Pandey V. Union of India O.A. No. 510/89 decided on 27.9.19989.

5. Heard the learned counsel for both the parties at length and have gone through the record of the case. During the course of the arguments the learned counsel has also referred to a decision in O.A. No. 999/89 R.C. Jhamtani V. Union of India decided by the Principal Bench on 17.10.89. In that case the petitioner was allotted government residence in Andrews Ganj, New Delhi in the year 1983. He was sent on deputation to Government of Afghanistan. He has returned from Afghanistan and resumed duty in the Planning Commission on 20.2.1989. The request of the applicant was for retention of the Government accommodation from 26.3.1988 to 25.9.1988 was granted on payment of double the standard licence fee has not been acceded to nor his prayer for regularisation of the flat in his name was also not acceded to. He was served with the showcause notice for the eviction. In that case the judgement of Mohan Chandra Pandey O.A. No. 510/89 was also referred. In that case no eviction order was passed against the petitioner Shri Jhamtani. Thus the facts of this case are not analogous to the present case. Shri Jhamtani came back on foreign deputation within a period of one year five months. The applicant while he has been transferred to Patna his allotment was cancelled and before he could join in

Delhi on retransferred from Patna in June 1993, the impugned order of eviction had already been passed on 21.4.1993.

Any further representation by the applicant was also rejected.

6. The contention of the learned counsel for the applicant is that while the applicant was posted at Delhi he was allowed retention of the quarter at Faridabad and in view of this after retransfer from Patna to Delhi he should be given the same benefit as that will be discriminatory. The learned counsel could not show any rule to this effect while statutory rule on the subject has laid down in SR Rule 317-B-11 allows the retention of the quarter after transfer only for two months and the allotment in such a case stands cancelled after the said period of two months. It is undisputed fact that applicant was transferred to Patna in August 1991. On his transfer to Patna he himself made a request for retention of the quarter and he was allowed six months period till 8.4.1992, at the rate of twice the licence fee. The letter dated 22.5.1992 by the Assistant Director of Estate which has not been challenged in this case is clear on the point that the allotment has been cancelled with effect from 8.10.1991 and that he was allowed to retain the said quarter till 8.4.1992. No further extention beyond 8.4.1992 was allowed to him.

He was also informed that necessary proceedings for eviction shall be taken and that he will be liable to be charged damages @.Rs. 1928/- per month with effect from 9.4.1992.

The applicant on his own made further request on 8.7.1992 for retention of the said quarter upto 31.8.1992. Thus, he has requested that he should be accommodated till 31.8.1992. He cannot now resile from his own undertaking and claim for retention of the quarter beyond that period. There is nothing on record to show that the applicant after 31.8.1992 was granted permission for retention of the quarter on any of the request made by the applicant. Such a request was also

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not on record. The applicant has not at any time earlier assailed non action on the part of the respondent, Directorate of Estate, in not allowing his retention on account of alleged illness of his daughter Ms. Sudesh Rana. No medical certificate has been filed to show that Ms. Sudesh Rana was being treated at Dr. Ram Manohar Lohia Hospital even after that date. The representation of the applicant dated 8.7.1992 (Annexure 'D') goes to show that the applicant's daughter was being treated at Faridabad also. Thus, the applicant has not made out any case whereby the respondents could have granted him permission beyond 31.8.1992. Under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 as amended in 1980 applies to such government servant who remained in an unauthorised occupation of public premises. The impugned order of eviction dated 21.4.1993 therefore cannot be said to be against the provisions of law and has been passed after giving opportunity to the applicant. He was served with a notice under Section 7 of the aforesaid Act dated 18.5.1992. The impugned Order of eviction has been passed according to law. The appeal in such order lies against the District Court which remedy was not availed of by the applicant. However, he referred a representation dated 26.6.1993 to the Directorate of Estates and which has been rejected by the order dated 2.9.1993.

7. The learned counsel for the applicant argued that after the applicant has been transferred back to Delhi, the applicant is eligible for re-allotment/regularisation of the said accommodation in his favour as a number of employees are coming from Ghaziabad and Faridabad daily who has been allotted accommodation either in Ghaziabad or Faridabad. The learned counsel for the respondents argued that prior to 1987 as a

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policy matter, those who have transferred prior to 1987 to
Delhi were allowed to retain the quarter but after that the
policy has been changed. In any case if the applicant has been
retransferred to Delhi he has to make a request for allotment
at Delhi as per his turn or may make a request for out of turn
allotment at Delhi. By making such a request the impugned
order of eviction cannot be faulted with.

8. In view of the facts and circumstances there is no
merit in this application and the same is dismissed leaving
the parties to bear their own costs. The Interim Relief
granted on 16.11.1993 is vacated.

J. P. Sharma

(J.P. Sharma)
Member (J)

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Mittal