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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A.No.585/93

New Delhi, this the 27th Day of October, 1994.

HON'BLE SHRI J.P.SHARMA MEMBER (J)

HON'BLE SHRI P.T.THIRUVENGADAM MEMBER (A)

Dr. Anil Kumar Sharma
son of Shri Shyam Sunder Sharma
Medical Officer, Lok Nayak
Jai Prakash Narain Hospital,
Delhi Administration, Delhi
r/o C-25, Minto Road, New Delhi. ..Applicant
(By Advocate Shri B.Krishan)

Vs.

1. Union of India, through
The Director of Estates,
Directorate of Estates,
Nirman Bhavan, New Delhi.
2. The Estate Officer,
Directorate of Estates,
Nirman Bhavan, New Delhi. ..Respondents.
(By Shri Madhav Panikkar, Advocate)

ORDER (Oral)

HON'BLE SHRI J.P.SHARMA MEMBER (J)

The father of the applicant Shri Shyam Sunder Sharma was in service as teacher in Delhi Administration who was allotted residence bearing No.C-25, Minto Road, New Delhi and he retired on superannuation on 31-12-90. The applicant joined Central Health Service in September 1987 and shared the accommodation with the retiree and still continues to occupy the same having made a request to Director of Estates in the prescribed proforma for regularisation of that accommodation in his name. The applicant is working in CCU (Medicine Department) LNJP Hospital, New Delhi. In this proforma application the applicant has also given a certificate that no other member of his family owns a house in Delhi within the limits of any local adjoining municipality. His application was considered by the Director of Estates and the Medical Superintendent LNJP Hospital was informed by the Memo dated 28-29 January 1993 that the case

of the applicant was considered and his request could not be acceded to as the same is not covered under the rules.

2. The applicant filed the present application in March 1993 aggrieved by the aforesaid order as well as regarding the regularisation of allotment pending with respondent No.2. It appears to have been stayed by the Estate Officer in view of the fact that the application of regularisation of quarter was still pending before the Director of Estates. The applicant has also assailed the Memo dated 27-8-97 and Memo dated 1-4-1991 wherein the Director of Estates levies damages at the penal rate for a specified period on the prescribed amount per square meter.

3. The reliefs claimed by the applicant in this application in para 8 are as follows:-

- (i) The allotment in respect of Government Residence bearing No.C.25, Minto Road (Type 'C) may please be directed to be regularised in the name of the applicant with effect from the date of cancellation of the same in the name of his father i.e. with effect from 1-5-1991.
- (ii) The applicant may not be made liable to pay any sort of market rent/damages/ penal rent etc. in respect of the said premises.
- (iii) The discreminatory policy of the government on the basis of which the applicant is being discreminated may also be quashed.
- (iv) The Office Memo dated 27-8-87 and 1-4-91 may also be declared ultra vires

of the Allotment Rules and Fundamental Rules. The operation of the same Memos. may also be quashed.

- (v) Such other or further orders as this Hon'ble Tribunal may deem fit and proper may also be passed in favour of the applicant and against the respondents, with costs.

4. On notice, the respondents contested the application by filing the reply and opposed the grant of the reliefs prayed for on a number of averments made in the counter. It is stated that allotment of the above said premises to Shri Shyam Sunder was cancelled with effect from 30-4-91 and the application for regularisation of the applicant was considered which was not acceded to on the ground that his posting in LNJP Hospital does not come within the eligibility list for allotment/regularisation of the government accommodation. It is further added that only ministerial staff of the said hospital is eligible for allotment. The respondents have also annexed a copy of the O.M. dated 26-10-93 with the counter which goes to show at Sl.No.36 under the Heading 'List of offices eligible for GPRA at Delhi of Delhi Administration and at the Sl.No.³⁶ it is written LNJP Hospital (Ministerial staff only).

5. The applicant has also filed rejoinder highlighting the fact taken in the application in para 4.10 that the respondents have not followed their own policy in the case of Dr. Adarsh Chaughary and Dr. MM Mendiratta as well as reiterating in the rejoinder the case of Dr. S. P. Bansal also who is Medical Superintendent in occupation of general

pool accommodation bearing No.D-II/112 Kidwai Nagar (East) New Delhi and D-II/56 Kidwai Nagar Delhi, respectively.

6. We have heard Shri B.Krishan at length who has referred to us the O.M. annexed to the application of 21-9-87 and O.M. dated 1-5-81. On the other hand, the respondents' counsel has filed the O.M. issued in October, 1991 and August 1989 which deal with the matter of allotment of general pool accommodation including hostels in Delhi. During the course of hearing certain other O.Ms of January 1992 and September 1993 have been placed before us by the learned counsel for the applicant but these relate to employees of C.B.I and are not relevant for this particular case except that in the O.M. dated 2-1-92 there is a mention that besides C.B.I other ineligible officers will not be considered for out of turn allotment and debars the retirees. The learned counsel for the respondents have also placed before us the official file maintained by the Director of Estates of the retiree Shri Shyam Sunder in regard to premises No.C-25, Minto Road, New Delhi and pointed out that the retiree owns an accommodation in his own name No.A-129 ^{near} ~~Sarjmal~~ Vihar / Vivek Vihar Shahdara-92. It is stated that all correspondence by the retiree was made from this address and this fact has been concealed by the applicant in the proforma application stating that his father does not own any premises in Delhi or in the nearby municipal area. Though the respondents have not taken this point in reply but the official records maintained on day to day basis in the personal allotment file of the retiree has to be considered in that light and cannot be said to be in any way unreliable document.

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7. The learned counsel for the applicant vehemently argued on the point of discrimination knowing well that his case is not covered by the O.M. dated 1-5-81 which only prescribes out of turn allotment to the wards of retirees who are eligible ^{from} general pool accommodation and that the retirees should also have been allotted from general pool accommodation. It is understood that the applicant is not covered under the policy of the government laid down in O.M. of 1989 and 1991 referred to above which excludes the staff of LNJP Hospital from allotment from general pool accommodation excepting the ministerial staff. It is also not denied that the applicant is not on the staff of the ministerial cadre of the said hospital. Thus, according to rules the applicant cannot claim out of turn allotment as a ward of the retiree.

8. We have also considered this aspect from another angle. The applicant has also concealed certain material information in the proforma application for regularisation of the accommodation - an important fact of owning House No. A/129, Surajmal Vihar ^{near} Vivek Vihar, Shahdara-92. Though the applicant was not put to notice but it is referred that the applicant's father has been corresponding with the Director of Estates from that address. However we are not taking this into account as a proved fact of record since it is not mentioned in the reply of the respondents so that the applicant may have omitted the same in the rejoinder.

9. Regarding the point of discrimination, these facts appear to have been not denied by the respondents. However if any allotment has been made in violation of the administrative instructions laid down in the policy of the government, that

cannot be made as a rule. Two wrongs cannot make one correct. If wrong allotment has been made, it was open to the applicant himself to go into for cancellation of those allotment orders. We also find that there is power of relaxation of statutory instructions laid down in S.R.317-B-25. The learned counsel for the applicant however emphasised that if there is a power of relaxation, the authority exercising that power should record its reason. The applicant has not got any such file of allotment of above three doctors summoned to find out whether any reasons which were personal to those doctors have been mentioned while relaxing the provisions laid down in the instructions. Even this discrimination cannot be taken to give the relief to the applicant as a scope of interference by Tribunal in a policy matter restricted by the recent decision of the Supreme Court in the case of Prem Kumari Vs. Union Territory of Chandigarh reported in 1994 (27) ATC p.31. That was a case where a daughter-in-law was entitled to out of turn allotment as a ward of retiree but the Administration had removed that entry though retained the entry of other relatives, viz., unmarried daughter, son, wife, etc. The matter went to the High Court which upheld the policy of the Administration and the Hon'ble Supreme Court on the appeal by the aggrieved party Smt. Prem Kumari held that unless the policy is of invidious nature it cannot be interfered with. In the present case when LNJP Hospital staff except the ministerial staff has been excluded for consideration for allotment from general pool. The applicant in the application though has not taken as a specific stand that there is no specific pool for the staff other than ministerial staff serving in LNJP Hospital but the counsel for

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respondents pointed out that such staff gets allotment from the Delhi Administration. In view of this fact we cannot find that this policy is mala fide or in any way arbitrary.

10. The applicant has also sought a relief that he may not be made liable to pay damages but this is a matter which is totally premature. Thus no relief can be granted in this respect.

11. The applicant has also prayed that the Memos. of 27th August 1987 and 1-4-91 may be declared ultra vires of the Allotment Rules and Fundamental Rules. We do not find any valid ground that such instructions which have been tested ^{by} / time have become violative of Fundamental Rules in the case of the applicant. The rules are of governing nature for the allotment of premises to the Central Government employees and have the sanctity of S.R.317-B-25 and framed under Allotment of Government Residences (General ⁱⁿ Pool/Delhi) Rules 1963. While the order was being dictated the learned counsel for the applicant pointed out that he has not argued on the point of ultra vires and he is not pressing on this relief. In view of this, no clear finding is given.

12. In view of the aforesaid circumstances, the present applicant stands devoid of merits and is dismissed leaving the parties to bear their own costs.

13. The interim order granted by this Tribunal by the order dated 17-3-93 is vacated. The official file may be returned.

P. T. Thiruvengadam
(P.T.THIRUVENGADAM)
Member(A)

J. P. Sharma
(J.P.SHARMA)
Member (J)