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CENTRAL ADMINISTRATIVE TRIBUNAL, ADDL. BENCH
ALAHABAD

Dated: This the // th day of April 1997

CORAM : Hon'ble Mr. D.S.Baweja, A.M.

ORIGINAL APPLICATION NO.1102 OF 1996

B.N.Ghosh aged about 56 years
S/o Late Shri G.C.Ghosh, presently
residing at E.T. 4B, Bombinod Hospital
Compound, Tagore Road, Kanpur, presently
posted at Ordnance Equipment Factory
Hazratpur as Junior Works Manager.

..... petitioner

C/A Shri R.Verma

Versus

1. Union of India through the Secretary,
Ministry of Defence, New Delhi.
2. Shri S.Ramaswamy, Additional Director
General (Head Quarters), Ordnance
Equipment Factory Group of Factories,
G.T.Road, Kanpur.
3. Shri R.M.Tripathi, General Manager,
Ordnance Equipment Factory, Kanpur.

..... Respondents

C/R Km. Sadhana Srivastava
Shri N.B.Singh.

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ORDER

By Hon'ble Mr.D.S.Baweja, A.M.-

This application has been filed with a prayer to quash the order dated 29.8.1996 directing the applicant to vacate the quarter No.ET-4/B Type IV and also to direct the respondents to allow the applicant to retain this quarter on transfer upto May 1997.

2. The applicant while working as Junior Works Manager (Clothing/Leather) Ordnance Equipment Factory, Kanpur was transferred vide order dated 27.3.1996 from Kanpur to Ordnance Equipment Factory Hazratpur. The applicant has carried out the transfer order but made a request for retention of the quarter No.ET-4/B Type IV occupied by him at Kanpur in view of the education of his children as well as his wife's treatment. The request was not agreed to by the impugned order dated 29.8.1996 and he had been advised to vacate the said quarter. Being aggrieved, this application has been filed on 14.10.1996.

3. The main ground for challenging the impugned order and praying for the relief is that his similarly placed colleagues covered by the same transfer order dated 27.3.1996 S/Shri Devendra Kumar at Serial No.3, T.B.Singh at Serial no.14, A.K.Goswami at Serial No.21 and R.N.Dubey at Serial no.10 had made requests on similar grounds for retention of the quarter and they were allowed to retain the quarter upto December 1996 but the applicant has been refused retention of the quarter. The applicant states that a similar order dated 14.6.1996 allowing ~~him~~ retention was passed in respect of the applicant but this was not served on him and

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subsequently his request was rejected as per the impugned order dated 29.8.1996. This action of the respondent no.3 is discriminatory and, therefore, ^min violation of Article 14 of the Constitution of India. The applicant further alleges that the refusal of permission has been done under pressure from respondent no.2, Shri S.Ramaswamy who was biased against the applicant.

4. The respondents have opposed the application by filing two counter replies, one counter reply has been filed on behalf of all the respondents by Shri B.B.Sherma, Dy. General Manager, Ordnance Equipment Factory, Kanpur. The second counter affidavit is also filed by the same officer said to be on behalf of respondent no.1, only. A supplementary counter affidavit has also been filed by the same officer in reply to the rejoinder affidavit by the applicant. The respondents have submitted that the applicant had made a request for retention of the house upto May 1997 on the ground of academic session of his two daughters - one studying for M.D. in Kanpur Medical College and other doing B.Sc. The applicant was transferred during April 1996 and academic session would have been over by June 1996, i.e. within a period of two months which is the permissible period to retain the quarter on no mal rent. Further the daughter studying in M.D. in the Medical College ~~and~~ had been ~~also~~ married during June 1996, a fact which has not been disclosed by the applicant. In view of these facts, there was no ground for retaining quarter at Kanpur. Further the applicant had asked retention upto May 1997. Retention of the quarter beyond a period of 3 months is not permissible as per the existing S.R.O. The request of the applicant was considered on its own merit and the same

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was not acceded to by the competent authority. The requests of the other colleagues and permitting them to retain quarter had been considered on merit in each case and no discrimination has been caused to the applicant. The allegations of malafide and pressure from respondent no.2 out of his personal malice and prejudice against the applicant are unfounded. The grounds which have been advanced making out a case of malafide intention of the respondent no.2 are not sustainable as it was the respondent no.2 who while working as General Manager, had taken up the case of the applicant for sympathetic consideration when he was transferred during 1992 as is clear from the letter dated 18.2.1992 brought on record through supplementary counter affidavit. Therefore, the allegation against the respondent no.2 are figment of applicant's imagination and are totally denied. The respondents, pray that in view of the facts detailed in the counter reply, the grounds taken by the applicant are not sustainable and the application deserves to be dismissed.

5. As per order dated 16.10.1996, interim stay was granted directing not to interfere in the possession of the quarter till the next date. This was extended from time to time till the hearing of the case.

6. The applicant has filed the rejoinder reply to the counter reply as well as to supplementary counter reply. The applicant has reiterated the grounds advanced in the application while refuting the contentions of the respondents.



7. I have heard Shri Rakesh Verma, learned counsel for the applicant and Km. Sadhana Srivastava, learned counsel for the respondents. The learned counsel for the respondents were asked to bring on record the orders granting permission to retain quarter to the colleagues of the applicant as brought out in the application. The same were submitted through a supplementary counter affidavit submitted taken on record. Copy of the supplementary counter affidavit was given to the counsel of the applicant.

8. I have carefully considered the arguments advanced during the hearing and also gone through the material on record.

9. From the rival averments, the main facts of the case are admitted. The applicant had requested for retention of the house upto May 1997 but the same was not agreed to as per the impugned order but for similar reasons other colleagues of the applicant transferred ~~as~~ ^{by} per ^{of} the same order had been allowed to retain the quarter upto December 1996. The thrust of applicant's arguments is that the applicant had been discriminated in refusal of retention of the quarter and this has been done ~~also~~ due to bias and prejudice of respondent no.2 against the applicant. In view of these facts, the main issue be determined is whether the applicant has been discriminated and whether the foundation of this discrimination is the prejudice and bias of the respondent no.2 against the applicant.

10. I will first consider the allegation of bias and prejudice on the part of respondent no.2 who as per the

applicant put pressure on respondent no.3 not to allow the retention of the quarter to the applicant. The averments ^{to} ~~have~~ ^{are as under} made out a case of bias on account of annoyance ~~on account of~~ -

- a) his earlier transfer in 1992 when the respondent no.2 was the General Manager and this transfer order was subsequently modified and the annoyed the respondent no.2;
- b) the respondent no.2 asked the applicant to vacate the quarter after the modification of the transfer order in violation of the rules but the same was allowed by the higher authorities on representation made by the applicant. ^I ~~We~~ have carefully considered these averments to identify whether these could form the basis of the allegations of bias. The respondents have brought a copy of the letter dated 18.8.1992 on record to controvert the allegations of the applicant. On going through this letter I find that the respondent no.2 had favourably recommended the staying of the transfer order for some period in view of education of children of applicant. Further approval for retention of the quarter was to be given by the General Manager while the respondent no.2 was working as Additional Director General (Head Quarter). Except making a statement that respondent no.2 has put pressure on respondent no.3, there is nothing on record to support this contention. This appears to be more a presumption of the applicant. In the back ground of these facts ^{I am} ~~we are~~ not impressed by the ground of bias and prejudice advanced by the applicant.

11. Coming to the issue of discrimination alleged by the

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we note that ^{he} respondents have admitted that as per the extant rules, retention of the quarter for a period of 8 months is permissible. Under certain conditions laid down. Referring to letter dated 9/11-6-93 laying down the rules for "Quarter allotment in Ordnance Factories" Rule 15(2) (XIV)⁴⁴ provided ~~for~~ as under:-

Transfer during the middle of the academic year of their children.

Upto six months beyond permissible period of two months or till the end of school or college academic year of children ~~whichever~~ is earlier.
whichever

The respondents submit that the request of the applicant was considered by the competent authority and he did not find the same satisfying the stipulations laid down for permitting retention of house beyond two months. Respondents have explained that when the case of the applicant was being processed, it came to knowledge that his elder daughter was married off. The second daughter was doing B.Sc. and the academic session invariably ends in June/July. The allegation of the applicant is that other colleagues who were similarly placed with regard to academic session of their children, the retention of the house was allowed. We have gone through the representations made by S/Shri T.B.Singh, A.K.Goswami and Devendra Kumar and note that reasons advanced are more or less the same as that of the applicant. Brief particulars are given below:-

A.K.Goswami	18.4.1996	Children to appear in Board Examination during session 1996-97.
T.B.Singh	15.6.96	Due to change of University in mid session, admission for ^{his son} purpose not possible to secure.
Devendra Kumar	3.4.1996	Daughter studying in M.Sc. (Prev.) to allow retention of the house to complete M.Sc (Final).

All three officers were allowed retention of the quarter for a period of 8 months. From the above details it is quite obvious that the requirement of the retention

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of the house was for the academic session covering the year 1996-97, i.e. the same as that of the applicant.

12. It is conceded that the matters relating to permission of the retention of the house is on the province of the Executive Authority and each case is to be considered on its own merit and keeping in view the extant instructions. However, while exercising the discretionary power, the competent authority is expected to act fairly and not in a discriminatory manner. In the present case, the other officers covered by the same order, and similarly placed for the education of children have been permitted to retain house. The applicant has been not allowed the same. ^I ~~we~~ ^{am} not convinced by the arguments ^{forward} put ~~forward~~ by the respondents that he ^{had} asked retention upto May 1997 which was not permissible as per rules. If the permission could not be granted upto May 1997, then at-least it could be given for a period of 8 months, upto December 1996. Though ^I ~~we~~ have not been accepted the plea malafides against respondent no.2, but ^I ~~we~~ ^{am} inclined to hold that respondent no.3 has not acted fairly in ^{refusing} ~~replying~~ the retention of the house to the applicant for a period of 8 months as was done for the other officers similarly placed.

13. As indicated earlier, the applicant has been continuing to retain the quarter at Kanpur on account of the operation of the stay order during the pendency of the Original Application. The matter is being decided during March 1997. Keeping in view my findings on allegation of discrimination and the fact that the applicant has continued to retain the quarter, I consider it appropriate that applicant ~~should~~ be allowed to retain the quarter

(a)

No.ET-4/B Tupe IV upto May 1997. However, the recovery of the normal and penal rent for the period from the date of transfer till 30.5.1997 shall be as per the extant rules. I also provide that the applicant shall vacate the quarter on 31.5.1997 without waiting for any further proceedings required to be taken by the respondents for vacating the quarter.

14. The application is allowed and disposed of with the directions as detailed in para 13 above. No order as to costs.

Shrinif
MEMBER (A)