

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

M.A. No.175 of 1997
O.A. No.952 of 1996

Present: Hon'ble Mr. D. Purkavastha, Judicial Member

Hon'ble Mr. G. S. Maingi, Administrative Member

Sri D. K. Basak, S/o Sri Gobinda Lal Basak, working as Assistant Chemist in the Office of Deputy Director General, Geological Survey of India, North-Eastern Region, Lansanpoh, Nongthymmai, Lower Motinagar, Shillong resident of Flat No.52/III, C.G.Qrs. Calcutta-40

... Applicant

VS

1. Union of India through Secretary, Ministry of Urban Development, Government of India, Nirman Bhawan, New Delhi-110 011

2. Director of Estates, Government of India, Ministry of Urban Development, Nirman Bhawan, New Delhi-110 011

3. Deputy Director General, Geological Survey of India, Lansanpoh, Nongthymmai Lower Motinagar, Shillong-14

4. Estates Manager, 5, Esplanade East Calcutta-700 069

... Respondents

For the Applicant(s): Mr. M. M. Roychowdhury, counsel

For the Respondents : Mrs. B. Mukherjee, counsel

Heard on 16.8.1999

: : Date of order: 03-9-99

O R D E R

D. Purkavastha, JM

The dispute in this case is relating to the entitlement of the quarter on transfer from Calcutta to North-Eastern Region by an order of transfer dated 4.5.95. The case of the applicant in short, is that he was allotted a Government accommodation bearing Flat No.52/III, C.G. Qrs. Calcutta-40 in the year of 1991. He occupied the said quarter with effect from 8.4.91. The applicant has been transferred from Calcutta to Shillong by an order dated 4.5.95. He was released on 29.9.95 and joined at Shillong on 9.10.95. According to the applicant, he had already



earned the basic pay of Rs.2825/- per month with effect from 1.9.95 as per last pay certificate (Annexure/A2 to the application). But the respondents cancelled the allotment of the Government accommodation by an order dated 4.12.95. Annexure/A2 to the application. Thereafter the applicant submitted a representation on 29.1.96. Annexure/A4 to the application. It is also alleged by the applicant that the respondent No.3, Deputy Director General also protested such cancellation order of allotment by a letter dated 1.2.1996. Annexure/A5. In spite of such letter at Annexure/A5, the respondent No.4 passed an order of eviction in an illegal way vide letter dated 6.5.96. Annexure/A7 to the application. According to the applicant, he is receiving the basic pay at the rate of Rs.2825/- as per last pay certificate. Annexure/A1 with effect from 1.9.95. Therefore, he became eligible to have Type IV quarter. So, after the aforesaid transfer from Calcutta to Shillong the applicant has right to retain his Government accommodation i.e., Type III accommodation at Calcutta. According to Rule, whoever is transferred from any area to hill station of North-Eastern Region, he may retain his quarter in the previous station one type below the eligibility. Therefore, all actions of the respondents in respect of cancellation of the quarter and denying the allotment of Type III quarter after having been transferred from Calcutta to Shillong with effect from 29.9.95 are highly arbitrary, illegal and liable to be quashed. The applicant also filed one M.A.

2. The respondents denied the allegation and claim of the applicant by filing a written statement. According to the respondents, as per existing allotment rules regarding general pool accommodation an allottee who is to transfer to the North-Eastern Region he/she may be entitled to a below type quarter for his family members during his stay at the North-Eastern Region. As such the applicant, Shri Basak is also

entitled to below type Government accommodation and was allowed to a Type II quarter being No.D-28/Tolivauda on 14.3.96 vide No.2/6/94-95/Allot. But the applicant did not accept the said allotment and the same was cancelled with effect from 14.3.96. It is stated by the respondents that the applicant was not entitled to Type IV Government accommodation on the date he mentioned in the application under the allotment rules because as on 1.10.93 which is the cut off date his basic pay was less than Rs.2800/per month. As per existing rule he was offered an alternative accommodation one type below his entitlement, but was refused by him. Therefore, the applicant became unauthorised occupant in the said quarter and he was liable to be evicted from the said accommodation. The prayer for the applicant for retention of the flat No.52, Type III, Tolivauda was rejected by the Director of Estate, New Delhi by a letter dated 5.7.96. Annexure/R1 to the reply and therefore, the case of the applicant is not maintainable and liable to be dismissed.

3. Mr. Roychowdhury, learned advocate strenuously contended before us that the applicant has been transferred from Calcutta to Shillong by an order dated 9.10.95 and from the Annexure/A2 i.e., last pay certificate it is clear that the applicant is enjoying the pay scale of Rs.2825/- (Basic). Therefore, as per basic pay the applicant is entitled to Type IV quarter and on the date of transfer the applicant was enjoying Type III quarter and thereby he is legally entitled to regain Type III one which is below one type which he was entitled to on the date of transfer from Calcutta to Shillong and his basic pay on 1.9.95 is more than Rs.2800/-. Therefore, there is no justification on the part of the respondents to refuse the allotment of Type III quarter which was being enjoyed by the applicant on the date of transfer and he submits that the contention of the respondents as disclosed in the letter dated 4.5.96 is not tenable and liable to be quashed. On the contrary, learned advocate, Mr. Mukherjee

appearing on behalf of the respondents submits that the applicant was rightly asked to vacate the Type III quarter because he was only entitled to type II quarter which was allotted in his favour after his transfer from Calcutta to Shillong. According to the respondents, the basic pay of Shri Basak as on 1.10.93 i.e., the cut off date for the current allotment year was less than Rs.2800/- per month and he is entitled to type III accommodation and on his transfer to Shillong he can retain one type below accommodation, i.e., Type II only. Therefore, his request for retaining the Type III accommodation during his posting to Shillong is not covered by the allotment rules and hence it was rightly rejected. Mr. Mukherjee further submits that the applicant did not occupy the Type II quarter which has been allotted to him since he refused to accept the Type II quarter as per rules. Therefore, he was treated as unauthorised occupant in accordance with the rules and steps were taken to evict him from the said quarter. So, the application is devoid of merit and is liable to be dismissed. Mr. Mukherjee also produced instructions regarding application for allotment of general pool residence or hostel accommodation, Delhi/New Delhi for the allotment period from 1.1.94 to 31.12.95 which was applicable to the applicant also under the allotment rules.

4. In view of the aforesaid divergent arguments advanced by the learned advocate of both the parties we have gone through the records and perused the documents. It is found that the respondents took the stand ~~in respect~~ of the letter dated 5.7.96, Annexure/R1 to the reply written by the Assistant Director of Estate (Policy) of the office of the Directorate of Estates, Govt. of New Delhi. It is settled law that entitlement of an officer for allotment of General Pool accommodation is determined by the pay drawn on the cut off date for the allotment year and there is no dispute that the Government Residences (General Pool in Delhi) Rules, 1963 is also applicable to North Eastern Region

including Calcutta. Under Sub-rule (a) of S.R. 317-B-2 the expression of the word "allotment" means the grant of a licence to occupy a residence in accordance with the provisions of these rules; and under Sub-rule (b) of the said rule the expression of the "allotment year" means the year beginning on 1st January or such other period as may be notified by the President. The respondents produced one letter of the applicant dated 12.10.95 by which the applicant requested the authority for retention of the Govt. flat No.52, Type III, Tollygunge, Calcutta where it is stated that he has been transferred from GSI, Calcutta to GSI, N.E.R., Shillong and resumed duty on 9.10.95. So, he may be allowed to retain the said quarter which is one type below his entitlement since his parents are fully dependent on him and his basic pay is Rs.2825/- as on 1.9.95. Along with the said application the applicant also submitted one application form duly filled in by him for retention of the quarter. In the said application form the applicant has shown his basic pay as on 1.10.93 as Rs.2675/- and as on 1.10.95 Rs.2825/- against the column Emoluments as defined under FR-45-C excluding CCA, DA and dearness pay. Now the question comes what would be the cut off date for entitlement of the type of quarter as applied by the applicant. The respondents produced the Govt. of India instruction dated 15.10.93 and the said notification clearly indicated that the next allotment year under the General Pool accommodation has been notified to commence from 1.1.94 and will remain in force upto 31.12.95 and cut off date in para 4 of the *as been worked as on 1.10.93* said notification. It is further envisaged that entitlement for type of accommodation will be determined as per following basic pay as drawn on 1.10.93. So, the applicant admittedly has been transferred by an order dated 9.10.95 and he was occupying Type III quarter at Tollygunge. So, as per notification it is noticed by us that he has been transferred from Calcutta to Shillong within the period from 1.1.94 to 31.12.95 and the cut off date

has been fixed for determination of the entitlement of the quarter as on 1.10.93. From the letter of the respondents at Annexure 'R1' to the reply it is found that the respondents considered his representation for retention of the quarter and ultimately they decided that the applicant is not entitled to Type III accommodation as the cut off date under the rules is to be treated as on 1.10.93. It is not disputed by the applicant that on 1.10.93 he was enjoying the pay scale less than Rs.2800/- per month. So, on 1.10.93 he was entitled to Type III accommodation and on his transfer from Calcutta to Shillong he is entitled to retain one type below accommodation i.e., Type II only. Accordingly he was offered a Type II quarter, but he refused to enjoy the same. In view of the aforesaid circumstances we find that the decision taken by the respondents in the letter dated 5.7.96 is in accordance with the rules and we do not find any wrong or illegality in respect of taking decision after considering the representation dated 14.5.96 filed by the applicant.

5. According to the applicant, he is entitled to retain the quarter at least four months from the date of transfer. It is now settled law that a person shall be deemed to be on unauthorised occupation of the Govt. accommodation after expiry of the permissible limit to retain the quarter after transfer. And we do not find any justification of the applicant to retain the Type III quarter after transfer from Calcutta to Shillong claiming that his basic pay was Rs.2825/- as on 1.9.95 since the cut off date under the rules was 1.10.93.

6. So, in view of the aforesaid circumstances we do not find any justification to interfere with the action of the respondents in the matter of eviction of the applicant and also to realise the due rent payable by the applicant for unauthorised occupation of the quarter. After considering both the OA and MA we are