

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

Date of order: 2-12-1996

OA No. 530/1996

Smt. Sushila Garg, W/o Shri Suresh Garg,
aged 40 years, Resident of 78, Central
Revenue Colony, Jaipur (Rajasthan)

.. Applicant

Versus

1. Union of India through Secretary,
Ministry of Finance, Department of Revenue,
New Delhi.
2. Commissioner of Customs and Central Excise,
New Central Revenue Building, C-Scheme,
Jaipur.

.. Respondents

Smt. Sumati Bisnoi, counsel for the applicant
Shri V.S.Gurjar, counsel for the respondents

CORAM:

Hon'ble Mr. Ratan Prakash, Judicial Member

ORDER

Per Hon'ble Mr. Ratan Prakash, Judicial Member

Smt. Sushila Garg the applicant who is
serving as Inspector in the Customs and Central
Excise Department has approached this Tribunal
under Section 19 of the Administrative Tribunals
Act, 1985 to claim a direction against the respondents
to the effect that they may-

not get the government accommodation
allotted to the applicant vacated and
further not to interfere in the use and
enjoyment of the said accommodation which
is in the possession of the applicant.

2. The facts which are not largely in dispute are
that while serving as Inspector in the respondent

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Department of Customs and Central Excise, she was allotted a government accommodation (No.78, III) in the Central Revenue Colony in November, 92 of which she took possession in December, 92 vide Ann.A2. She was transferred to Jodhpur vide order dated 13-04-1995 (Ann.A3) and joined there on 29.05.1995. After her transfer to Jodhpur she applied for retention of the government accommodation at Jaipur and was allowed to retain the said accommodation till October, 1995 vide Ann.A4 and thereafter till 30th April, 1996 vide Ann.A5 dated 8/12-12-1995.

3. It is the case of the applicant that before the expiry of the said date i.e. 30th April, 1996 she moved an application at Ann.A6 through her Jodhpur office for further extension to retain accommodation up to July, 1996 on the ground that her daughters were studying at Jaipur. It is further the case of the applicant that in March, 96 a new transfer policy was introduced by the Department vide their notification dated 18-3-1996 (Ann.A8) whereby a provision was introduced that lady officers may submit their requests for transferring to places nearer to their stations of choice (say within about 150 kms.), which may be considered to the extent possible on administrative feasibility. Accordingly, the applicant moved an application Ann.A7 for her transfer from Jodhpur to Jaipur office on medical as well as on the ground of her children's education. This was submitted by her keeping in view the new transfer

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policy and presuming that she was already in possession of the government accommodation. The applicant was re-transferred to Jaipur vide order dated 25-5-1996 (Ann.A9) where she joined on 28-5-1996 (Ann.A10).

4. It is the grievance of the applicant that after being transferred back to Jaipur, she submitted two applications to the Deputy Commissioner for regularisation of accommodation in her possession before transfer to Jodhpur vide Ann.A11 and A12. The said applications were further rejected by the Commissioner vide order dated 19-8-1996 (Ann.A13) and she was also supplied alongwith it a copy of the wireless message dated 16-5-1996 (Ann.A13(a)). She made further efforts also by moving an application to Commissioner on 30-8-1996 (Ann.A14) for regularisation and also by one more application on 11-9-1996 in continuation of her earlier application, mentioning therein that she is ready to pay the damages till her priority gets covered (Ann.A15). These requests were also turned down by the Commissioner by order dated 12-9-1996 (Ann.A16).

5. The respondents have opposed this application by filing a reply to the OA as well as a reply to the interim relief prayed for by the applicant in the OA. In response to this, the applicant has also filed a rejoinder. The stand of the respondents is that since the applicant has been communicated that she is allowed to retain the accommodation in question only upto 30th April, 96 on payment of licence fee at thrice ~~of~~ the rate of normal rent and that no further extension would be possible; she has to vacate the accommodation.

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It has, therefore, been urged on behalf of the respondents that since the permission to retain the accommodation in question has come to an end by 30th April, 1996, ^{thereafter} she is an unauthorised occupant of the accommodation in question and that the Department is competent to cancel her allotment and further proceed in accordance with the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971. It has further been averred on behalf of the respondents that the applicant has no right to continue in possession of the accommodation after her transfer to Jaipur in view of the Ministry of Finance and Directorate of Estates letters dated 12-3-96 and 4-12-95 and that on her re-transfer to Jaipur, she had to apply afresh for allotment of accommodation and for which she has rightly and already applied on 1-7-1996.

6. I heard the learned counsel for the applicant Smt. Sumati Bisnoi and Shri V.S. Gurjar for the respondents and ~~also~~ examined the record in great detail. The OA is being disposed of at the stage of admission with the consent of the learned counsel for the parties.

7. The only question which is required to be considered in this OA is whether the applicant could be permitted to retain the regularly allotted accommodation after her re-transfer and joining ^{back} at Jaipur on 28-5-1996 (Ann.A10) in view of the clarification issued by the respondent department which is reproduced in Ann.A18 filed by the applicant?

8. It has been vehemently argued by the learned

counsel for the respondents that this clarification at Ann.A18 does not cover the category of cases of the applicant. It is urged that this clarification is issued by the respondents only in relation to the pending cases of unauthorised retention of government accommodation by its officers who after their initial transfer have been reposted even after the permitted period of retention. It has also been argued that in any case even such officers have to apply afresh and to wait for allotment of accommodation on the basis of priority for allotment of government accommodation.

9. On the contrary, it has been argued by the learned counsel for the applicant that the above provision is meant to cover not only of the officers mentioned therein but also the category of the applicant and that she is entitled to retain the accommodation in question till an allotment is made by the department on the basis of priority and the period of unauthorised occupation gets covered. It has been urged that at the most the applicant is liable to pay only the damage rent till such provision is made.

10. I have given anxious thought to the arguments of the learned counsels for the parties. It is necessary to reproduce here the relevant text of the clarification issued by the respondents vide Ann.A18 which reads as under:

"2. The matter has been reviewed and it has been decided that pending cases of unauthorised retention of Government accommodation by such officers who after their initial transfer, have been reposted even after the permitted period of retention, may not be regularised even on

payment of damages till their date of priority gets covered for the allotted accommodation. Such officers may be advised to submit fresh application for allotment and they should wait for their turn for regularisation of accommodation after their date of priority, get covered, for the period of unauthorised occupation, the officers concerned will be liable for payment of damages till the date of regularisation of the quarter."

This is an Office Memorandum No. 12035/21/95-POL-II dated 4-12-1995 issued by the Government of India, Directorate of Estates.

11. this. A perusal of para 2 of the Office Memorandum makes it abundantly clear that although it is basically meant to cover pending cases of unauthorised retention of government accommodation by its officers who after their initial transfer have been re-posted even after the permitted period of retention, still it appears to have been issued with an intention to win over the administrative difficulties created by retention of government accommodation on transfer/re-transfer of these officers. In the case of the applicant, the applicant was shifted to Jodhpur vide order dated 13-4-1995 and joined there on 29-5-95. By the department itself, she was authorised to retain the government accommodation in question till 30th April, 96. Consequent upon the change in the policy of transfer, to facilitate the allotment of accommodation to its lady officers, she submitted an application Ann.A6 through proper channel from Jodhpur to retain the accommodation at Jaipur till July, 96 or till allotment of government accommodation at Jodhpur. It is also made out that vide Ann.A7, she had made a request to the Commissioner, Central Excise, Jaipur

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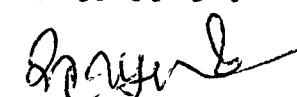
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for her re-transfer to Jaipur and eventually vide order 25th May, 1996 she has been posted back to Jaipur alongwith a number of officers in the transfer list. Consequent there upon, she joined her duties at Jaipur on 28th May, 96. Although on behalf of the respondents, it has been urged that the wireless message was issued to the applicant on 16th May, 96 that her retention of the government accommodation beyond 30th April, 96 is rejected and that she should vacate the house immediately failing which police help may have to be taken after 25th May, 96 yet it is made out that almost simultaneously the respondent department has issued the transfer order of 25th May, 96 (Ann.A9), whereby the applicant has been posted back to Jaipur. May be that the respondent department may not be in the know-how of the state of possession/vacation of the government accommodation allotted to the applicant; but it is a case wherein a lady officer has been accommodated and re-posted to Jaipur in consequence of their own policy circulated vide their letter dated 18-3-96 (Ann.A8). Moreover, the Office Memorandum dated 4-12-1995 issued by the respondent department on the subject of regularisation of accommodation on reposting is very significant. By virtue of para 2 it enables the respondent department not only to give an opportunity to such category of officers to retain the government accommodation at their earlier station but also to guide such officers to wait for their turn for regularisation of accommodation after their date of priority gets covered. This notification further advises such category of

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officers to submit fresh application for re-allotment of the earlier accommodation. In view of their own policy, it cannot be said that an officer who has been transferred to out station should in every case vacate the accommodation allotted at his earlier place of posting. More so when under para 2 of the said Office Memorandum such officer has been made liable to pay the damage rent as per their rules/guidelines in force. In the instant case also the applicant after re-posting to Jaipur has applied afresh on 1-7-96 for allotment/regularising ^{the} ~~of~~ accommodation in question and as such is entitled to reap the fruits of the said Office Memorandum dated 4-12-95. Consequently, while quashing the impugned order dated 12-9-96 (Ann.A16) the issue raised in this OA is answered in affirmative.

12. The OA is, therefore, allowed and the respondents are directed to reallocate/regularise the accommodation No. 78/III in accordance with para 2 of the Office Memorandum dated 4-12-95 read with the provisions regarding Separate Pool Accommodation for Lady Officers within a period of six months from the date of receipt of a copy of this order or after the period of applicant's unauthorised occupation gets covered on the basis of her application dated 1-7-96 (Ann.A12(a)) made for allotment of accommodation ^{and} ~~an~~ order is issued in her name, whichever is later. It is made clear that the applicant has to pay the damage rent as is permissible to be recovered from the applicant under the rules/guidelines in force and issued by the department. No order as to costs.


(Ratan Prakash)
Judicial Member