

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A.No. 234 of 1998.

DATE OF DECISION...2-6-1999.....

Shri Sukesh Kumar (PETITIONER(S))

Applicant appeared in person. ADVOCATE FOR THE
PETITIONER(S)

-VERSUS-

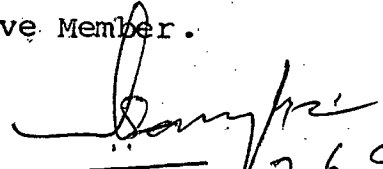
Union of India & Ors. RESPONDENT(S)

Sri A. Deb Roy, Sr.C.G.S.C. ADVOCATE FOR THE
RESPONDENTS.

THE HON'BLE SHRI G.L.SANGLYINE, ADMINISTRATIVE MEMBER.
THE HON'BLE

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Administrative Member.


2-6-99

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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 234 of 1998.

Date of Order : This the 2nd Day of June, 1999.

Shri G.L.Sanglyine, Administrative Member.

Shri Sukesh Kumar,
D.F.O (CC)
SSB, Shillong Division,
A.P.Secretariat Building,
Shillong- 793001.

. . . Applicant

Applicant appeared in person.

- Versus -

1. Union of India
through Director SSB,
East Block V,
R.K.Puram,
New Delhi-66.
2. Estate Officer (Deputy Secretary(SR)
Cabinet Secretariat,
Bikaner House Annexxe,
Shahjahan Road,
New Delhi-11.

. . . Respondents.

By Advocate Sri A.Deb Roy, Sr.C.G.S.C

O R D E R

G.L.SANGLYINE, ADMN. MEMBER,

The applicant is a Deputy Field Officer(CC) in the Directorate General of Security. He was transferred from New Delhi to North Eastern Region in 1993 and had joined his duty in Shillong on 31.5.1993. In New Delhi he occupied S.S.B Special Pool Quarter No.112. On 31.5.1993 he submitted an application for retention of the quarter. The Executive Engineer in the office of the Directorate General of Security vide order dated 21.9.1993 allowed the applicant to retain the quarter for bonafide use of his family members subject to payment as mentioned therein. Further, the quarter was allowed to be retained by the applicant till he is transferred

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out from the North Eastern Region as below:-

"It may also be noted that failure to vacate quarter No.112 Sector-I, R.K.Puram in your occupation on transfer to some other station outside N.E.Region will render you liable to payment of damages at market rate in accordance with SR-31 7-B-22 in r/o entire premises for the period of everyday."

On 4.8.1994 he was temporarily transferred from Shillong Division to SSB Directorate, New Delhi with immediate effect for a period of 6 months. For this transfer, he will not, as per rules, be entitled to any TA/DA during the period of his temporary transfer. The applicant carried out the order. His temporary transfer was extended from time to time and on 9-1-1996 the transfer was extended upto 30-4-1996. On 26.6.1996 the Assistant Director(EA) issued an order in supersession of order dated 4-8-1994 and order dated 9-1-1996 above and "in terms of Government of India Decision No.2 SR-114" the temporary transfer of the applicant from Shillong to New Delhi was treated as on regular basis upto 30.4.1996. By the same order he was transferred on regular basis to Shillong Division and was also released from SSB Directorate Headquarter retrospectively on 30.4.1996 (AN). After this, action to eject the applicant from the quarter was started. The respondents justify their action on the ground that the order for retention of the quarter dated 21-9-1993 had expired in 1996 when the applicant was transferred back to Shillong from New Delhi. The applicant submitted several representations and as a result of which the extension to retain the quarter was granted from time to time and latest upto 30.4.1998 by order dated 18.11.1997. Thereafter, on 4.9.1998 the Deputy Inspector General (A) in the office of the Directorate, SSB, New Delhi while expecting the applicant to voluntarily vacate the quarter issued the following order :

"Recovery of rent/damage rent in the light of Estate Officer's aforesaid orders has been worked out as per rules and the same comes to Rs. 72,698/- for the period w.e.f. 15.05.93 to 31.08.98. The details are annexed at 'A'. The recovery @ Rs. 3640/- per month will also continue from September, 1998 onward till vacation of the said quarter by Sri Sukesh Kumar."

"This Directorate Memos dated 18.10.94, 03.04.96, 07.01.97 and 18.11.97 regarding recovery of rent/damage rent is superseded by this Order. The recovery made till date from Shri Sukesh Kumar is not known to this office and hence you are requested to propose mode of recovery in suitable instalments after adjusting the recovery already made till date."

Situated thus the applicant submitted this Original Application seeking for a direction to the respondents to allow him to retain the quarter and to quash the order dated 18-11-1997 (Annexure A/1), order dated 12.12.1996 (Annexure A-3) and order dated 4.9.1998 (Annexure 2).

2. The respondents have contested the application by submitting written statement. Mr. A. Deb Roy, Sr. C.G.S.C., supported the contention of the respondents.

3. Heard the applicant who appeared in person and Mr. A. Deb Roy, learned Sr. C.G.S.C. In the facts and circumstances of the case of the applicant it is now to be seen whether the action of the respondents directing the applicant to vacate the quarter and pay the rent in the manner indicated above is sustainable. The facts as transpired show that the applicant was not transferred out from Shillong to New Delhi. He was simply under temporary transfer or attachment during the relevant period from 1994 to 1996. During this period his pay and allowances were continued to be drawn and disbursed from Shillong. According to the respondents themselves there was no post in the SSB Directorate at New

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Delhi available for the applicant during the period. On expiry of the extended period of temporary transfer he was sent back to Shillong on 30.4.1996 vide order dated 29.6.1996. This order dated 29.6.1996 was issued long after he had returned to Shillong. Therefore, it is clear that the order was issued simply for regularisation of the temporary transfer/attachment of the applicant. The order dated 29.9.1996 ~~treating~~ the temporary transfer of the applicant as a transfer on regular basis was issued "in terms of Government of India's Decision No.2 SR 114." The respondents have not produced any such Government of India Decision No.2 SR 114. However, it was understood at the time of hearing that this refers to the Government of India's orders below SR 114. Though the respondents are not specific in respect of the particular instructions which they applied to the case of the applicant, apparently the relevant orders would be the orders at (2) (b), particularly (2) (b) 2, which may be applicable in the present facts and circumstances. These are re-produced herein below for ready reference.:

"(2) Temporary transfer-(a) Entitlement:

(b) Other Conditions: In a case where the transfer initially made for a period exceeding 180 days, is subsequently reduced to a period of 180 days or less, the transfer travelling allowance originally allowed should not be changed to the disadvantage of the Government servant.

2. If a temporary transfer initially made for a period not exceeding 180 days, is later extended beyond this period, the travelling allowance already drawn shall be adjusted in the transfer travelling allowance claim but the daily allowance admissible up to the date of issue of orders extending the transfer, will not be so adjusted.

3. Every transfer order should specify whether it is a regular transfer or a temporary transfer for a period not exceeding 180 days. In order to obviate difficulty in Central Audit, the nature/period of transfer is to

be indicated in the travelling allowance Bill, i.e., in the column "purpose of journey" prescribed in the travelling allowance bill form.

4. The orders contained above apply only in the matter of regulating travelling/daily allowance and bear no effect on other factors like assumption of charge of a new post, change of a new post, change of headquarters, change of audit circle, drawal of pay and allowances of the post, etc., associated with the terms "transfer" defined in Supplementary Rule 2(18).

5. The claim for daily allowance for halt at the new station will require countersignature of the controlling officer in respect of the post at the new station, in case any portion of the claim remains undrawn on retransfer to the old headquarters." (Emphasis supplied)

According to these orders the treatment of temporary transfer as a transfer on regular basis is only for the purpose of payment of travelling allowances and daily allowances. Thus the impugned action of the respondents, namely, directing the applicant to vacate the quarter and to pay rent/damages rent as indicated above on the ground that the temporary transfer from Shillong to New Delhi is a regular transfer and his retransfer to Shillong a fresh transfer, is not only vague but arbitrary. The above order treating the temporary transfer as on regular basis and the retransfer cannot have any effect on the regularisation of occupation and retention of the quarter allotted to the applicant while he is serving in the North Eastern Region in terms of order dated 21-9-1993. Since the applicant was neither transferred out from Shillong to New Delhi nor transferred afresh from New Delhi to Shillong, in my view the order dated 21-9-1993 continues to regulate the occupation of the quarter allotted to him despite the fact that during the period of temporary transfer/attachment in New Delhi he had made further prayers and orders were issued by the respondents thereon. The action taken against the applicant, namely, to vacate the quarters and to pay rent as indicated herein above stemmed

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from the subsequent realisation of the respondents long after the applicant had returned to Shillong that special pool accommodation cannot be allowed to be retained by the occupant on transfer to North Eastern Region. It is seen from Annexure A/3 that it indicates that the conversion of temporary transfer/attachment as permanent transfer and the transfer back of the applicant to Shillong on 30.4.1996 were taken probably after the respondents realised their another mistake of prolonged temporary transfer granted to the applicant. At the same time, the applicant was directed to vacate the quarter. The impugned action of the respondents directing the applicant to vacate the quarter and to pay the rent/damage rent therefore is indicative of mala fide. The respondents were aware that the quarter allotted to the applicant is a SSB Special Pool Quarter. Yet the order dated 21.9.1993 was consciously issued by the respondents after due consideration of the representation of the applicant alongwith relevant factors. In the words of the respondents the retention of the quarter was allowed also on compassionate ground. The respondent No.2 admits vide order dated 12-12-1996, Annexure A/3, that on the strength of this order dated 21-9-1993 the applicant is legally retaining this quarter. In the light of the above I am of the view that the applicant continues to get the protection of the Memorandum dated 21-9-1993, Annexure 6. As such, the action of the respondents directing the applicant to vacate the quarter and to pay the rent otherwise than specified in the said

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memorandum is set aside and quashed. Any amount recovered in excess of the rent specified in the said memorandum shall be refunded to the applicant within 60(sixty) days from the date of receipt of this order.

The application is disposed of. No costs.


(G.L. SANGLYINE) 2.6.99
ADMINISTRATIVE MEMBER

PG