

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.2285/2016

Reserved on: 20.07.2017
Pronounced on: 21.09.2017

Hon'ble Mr. K.N. Shrivastava, Member (A)

Brijesh Kumar Mishra, Aged 48 years
Deputy Chief Engineer/TMC/HQ
Northern Railway,
s/o Sh. Ram Krishna Mishra,
R/o 244/6C, Railway Officers Enclave,
Panchkuian Road,
New Delhi – 110 001. ...Applicant

(Applicant in person)

Versus

Delhi Development Authority through
The Vice Chairman,
Delhi Development Authority
Vikas Sadan, INA,
New Delhi – 110 023. ...Respondent

(By Advocate: Sh. Dhanesh Relhan)

O R D E R

Through the medium of this OA, filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following main reliefs:-

“(i) It is respectfully prayed that the impugned Order No.F.2(05)2013/SQ/DDA/272 dated 09.03.16 may please be quashed and set aside because the same has been issued without passing any speaking/ reasoned order at the appropriate level and reasons for the decision taken by the officials of DDA on the request of the applicant have not been conveyed. Further, the decision is mechanical, arbitrary, unreasonable and unfair, in violation of principles of natural justice and has been taken without application of mind to the facts and circumstances of the case.

(ii) To call for the original records of the case pertaining to the request of the applicant and to quash the entire

proceedings as the same are in violation of laid down procedure and policy of Government of India and principles of natural justice.”

2. The factual matrix of this case is as under:

2.1 The applicant joined Indian Railway Service of Engineers (IRSE), which is a Group ‘A’ Central Government service. Under the Central Staffing Scheme (CSS), vide Department of Personnel and Training (DoPT) Annexure A-2 order dated 09.10.2012, he was posted as Commissioner (Land Management) in the Delhi Development Authority (DDA) on 22.11.2012. In that capacity, he was allotted an official accommodation Type-V, Quarter No.A-3, Old Rajinder Nagar, New Delhi vide DDA order dated 13.02.2013 (Annexure A-2).

2.2 Vide Ministry of Urban Development, (MOUD) order dated 25.08.2015, the applicant was repatriated to his parent organization, i.e., Indian Railways prematurely. On 27.08.2015 the applicant filed OA No.3218/2015 before this Bench of the Tribunal against his repatriation order dated 25.08.2015 on the ground that his repatriation has been ordered without the approval of the competent authority, i.e., Appointments Committee of the Cabinet (ACC) and without following the due procedure. The Tribunal vide an interlocutory order dated 28.08.2015 directed the MOUD not to relieve the applicant till the next date of hearing. The stay granted against the eviction of the quarter was further

extended by the Tribunal vide another inter-locutory order dated 02.09.2015.

2.3 Apparently, as per the extant rules, the applicant was entitled for retaining the residential accommodation for two months, i.e., till 26.10.2015, considering his repatriation order dated 25.08.2015, on payment of normal licence fees. The applicant vacated the Type-V, Quarter No.A-3, Old Rajinder Nagar, New Delhi on 26.11.2015 after his OA-3218/2015 was dismissed by the Tribunal vide order dated 29.09.2015. He thus overstayed for a period of 31 days.

2.4 Following his repatriation from DDA/MOUD, the applicant was not given posting immediately by his parent organization. He was thus kept in waiting from 30.09.2015 to 25.10.2015 He was finally posted by the Railway Board vide order dated 02.11.2015 as Deputy Chief Engineer, TMC/HQ office of the Northern Railway. The Railway Board vide Annexure A-6 letter dated 29.02.2016, addressed to General Manager, Northern Railway, regularized the aforesaid waiting period.

2.5 The applicant requested the DDA vide letter dated 21.10.2015 to allow him to retain Type-V, Quarter No.A-3, Old Rajinder Nagar, New Delhi till 31.03.2016, considering that his

daughter was studying in class X and he had not been allotted an official accommodation by the Northern Railway. His request was not considered, on the contrary, Director (Nazarat), DDA vide his Annexure A-13 letter dated 20.10.2015 directed him to vacate the quarter, which reads as under:

“Sub: Vacation of staff quarter No.A-3, Old Rajinder Nagar (type-V).

Sir,

The above staff quarter was allotted to you on 13.2.2013 while you were on deputation in DDA as Commissioner (LM). Now, vide E.O. No.1170 dated 26.8.2015 issued by Personnel Department, DDA you have been repatriated to your parent cadre, i.e. Railway Board, Ministry of Railways, Rail Bhawan, New Delhi w.e.f. 26.8.2015 (AN). In your case retention of 02 months is permissible though you have not applied for the same, so far. The occupation of the quarter w.e.f. 27.10.2015 shall be treated as “Unauthorized.”

You are, therefore, requested to vacate the staff quarter on or before 26.10.2015 failing which eviction proceedings shall be started and damage charges, i.e., 50 times of the normal licence fee for the unauthorized occupation would need to be paid by you.”

2.6 The applicant finally vacated the quarter on 26.11.2015.

He is aggrieved of the impugned Annexure A-1 letter dated 09.03.2016 of DDA, whereby he has been directed to pay an amount of Rs.86,000/- towards licence fee/penal rent for overstay in the DDA staff quarter. Challenging the impugned Annexure A-1 letter, the applicant has filed the instant OA praying for the reliefs, as indicated in para-1 supra.

3. Pursuant to the notice issued, the respondent entered appearance and filed its reply in which, broadly, the following averments have been made:

i) Section 3 (p) read with Section 14 of the Administrative Tribunals Act, 1985 defines the jurisdiction of the Tribunal. Section 3 (p) states that the Tribunal can adjudicate only the service matters. The issue involved in the present OA is not relating to service condition of the applicant and hence the Tribunal does not have jurisdiction to adjudicate it.

ii) Eviction proceedings have already been started by the Estate Officer under Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (for short, the P.P. Act). The sole intention of the applicant is to vitiate the eviction proceedings by indulging into the act of forum hunting. The P.P. Act is the Principal Act to deal with unauthorized occupation of official quarters. The said Act also provides for an appeal against the order of eviction passed by the Estate Officer.

iii) The applicant had joined as Principal Commissioner (Land Management) on deputation basis and was allotted Type-V, Quarter No.A-3, Old Rajinder Nagar, New Delhi on 13.02.2013. He occupied the said quarter on 25.02.2013. He was repatriated to his parent organization from DDA vide order dated 26.08.2015. As per the Rules, he was entitled to retain the said quarter for two months, i.e., upto 26.10.2015. Since he did not vacate the quarter thereafter, he became an unauthorized occupant from 26.10.2015. He finally vacated the quarter on 26.11.2015. He was liable to pay penal rent. Accordingly, vide the impugned Annexure A-1 letter dated

09.03.2016 he has been asked to pay licence fee/penal rent amounting to Rs.86,100/-.

4. The applicant has filed a rejoinder to the reply filed on behalf of the respondent in which he has controverted the assertion of the respondent that this Tribunal does not have jurisdiction to deal with the controversy involved in this OA.

5. On completion of the pleadings the case was taken up for hearing the arguments of the parties on 20.07.2017. Arguments of applicant as party in person and that of Shri Dhanesh Relhan, learned counsel for the respondent were heard. Both the parties by and large reiterated their averments in their respective pleadings. In addition, Shri Relhan brought to my notice the following judgments of the superior courts:

i) Judgment of the Hon'ble High Court of Delhi in **Delhi Development Authority vs. Arun Mishra** [WP(C) No.7279/2015 decided on 04.08.2015, wherein the Hon'ble High Court of Delhi held as under:-

“8. As far as the first issue is concerned, the order with regard to stay of the order passed by the Estate Office as agreed by counsel for the respondent is vacated. The respondent seeks time to seek appropriate remedy within a period of two weeks from today. As far as second issue is concerned, we request the CAT to decide the preliminary issue with regard to the maintainability of OA on 21.08.2015 (date of 6.8.2015 stands cancelled, as jointly prayed) while taking into account the judgments passed by the Hon'ble Supreme Court of India, the Division Bench of this Court and the earlier judgment of CAT itself.

9. Accordingly, the interim order with respect to the order passed by the Estate Office dated 26.06.2015 is vacated,

however, the respondent is granted two weeks time to assail the order. No coercive action shall be taken for two weeks from today.”

ii) Judgment of the Hon’ble High Court of Delhi in **Delhi Development Authority vs. Rakesh Bhatnagar** [WP(C)

No.7356/2015 decided on 04.08.2015, wherein the Hon’ble High Court of Delhi held as under:-

“4. We have heard counsel for the parties. It is agreed that the proceedings before the Estate Officer shall continue with leave to the respondent to seek such remedy as may be available to him in accordance with law. As far as the objection of the petitioner herein with regard to maintainability of the O.A. is concerned, we request the CAT to decide the preliminary issue with regard to the maintainability of OA on 21.08.2015 (date of 6.8.2015 stands cancelled, as jointly prayed) while taking into account the judgments passed by the Hon’ble Supreme Court of India, the Division Bench of this Court and the earlier judgment of CAT itself.”

iii) Judgment of the Hon’ble High Court of Delhi in case of

Union of India (UOI) and Ors. Vs. Dr. Jagdish Saran [WP(C)

No.1493-96 decided on 23.08.2005], wherein it has been held as under:-

“9. In view of the aforesaid, out of turn allotment under discretionary quota to a government servant de hors the Rules cannot be regarded as a matter relating to 'conditions of service'. The respondent has not been able to point out any service rule under which he was entitled to said accommodation under the discretionary quota. On the other hand, in the judgment of the Supreme Court in the case of Shiv Sagar Tiwari (supra) it has been held that the discretionary allotments made represent a scenario of what has come to be known as a Housing Scam. While dealing with the issue of damages to be charged from the out of turn allottees on account of their illegal occupation, the Supreme Court held that discretionary allotments de hors the rules to an ineligible person, entitles the government to charge damages. The recovery of damages from the respondent herein is, therefore, made as per the directions given by the Supreme Court and not on account of 'conditions of service', and it is difficult to construe and regard a direction given by the Supreme Court as a matter relating to condition of service between the petitioner and the respondent herein.

10. In view of the above, we hold that the learned Tribunal did not have jurisdiction to entertain the original application filed

by the respondent herein and the impugned order is illegal and void ab initio."

iv) Judgment of the Hon'ble High Court of Delhi in **Smt.**

Babli & Anr. Vs. Govt. of NCT of Delhi & Ors. with two connected Writ Petitions [WP(C) Nos.4651, 4652 and 4653/2001 decided on 31.08.2001], wherein the Hon'ble High Court of Delhi held as under:-

"10. We, accordingly, hold that CAT had no jurisdiction to entertain OAs claiming allotment or regularization of Govt. accommodation unless such claim was shown to be a condition of service. Nor could it assume jurisdiction where eviction action was taken against an employee for his alleged unauthorized occupation of the premises under the Evidence Act. These petitions are accordingly dismissed and Tribunal order affirmed."

v) Judgment of the Hon'ble Apex Court in case of **Union of India vs. Rasila Ram & Ors.** [2001 (10) SCC 623] wherein it has been held as under:-

"2. The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as the "Eviction Act") was enacted for eviction of unauthorised occupants from public premises. To attract the said provisions, it must be held that the premises was a public premises, as defined under the said Act, and the occupants must be held unauthorised occupants, as defined under the said Act. Once, a Government servant is held to be in occupation of a public premises as an unauthorised occupant within the meaning of Eviction Act, and appropriate orders are passed thereunder, the remedy to such occupants lies, as provided under the said Act. By no stretch of imagination the expression, "any other matter," in Section 3(q)(v) of the Administrative Act would confer jurisdiction on the Tribunal to go into the legality of the order passed by the competent authority under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. In this view of the matter, the impugned assumption of jurisdiction by the Tribunal, over an order passed by the competent authority under the Eviction Act, must be held to be invalid and without jurisdiction. This order of the Tribunal accordingly stands set aside. The appeals are accordingly allowed."

6. Relying on the aforementioned judgments, Shri Relhan submitted that this OA is liable to be dismissed on the ground of jurisdiction of the Tribunal.

7. I have considered the arguments of the learned counsel for the parties and also perused the pleadings. The factual description of the case is not in dispute. The applicant, on his repatriation to his parent department vide order dated 26.08.2015 was entitled to retain the DDA accommodation for just two months paying the normal licence fees. He vacated the quarter on 26.11.2015, i.e., after a period of 31 days beyond two months. The applicant had requested the respondent to allow him to retain the quarter in question till 31.03.2016 on the ground that his daughter was studying in class-X and that he had not been allotted a residential accommodation by his parent organization. It is also not in dispute that the applicant after his repatriation from DDA was not given posting by the Railway Board immediately and he was kept in waiting for two months from 30.09.2015 to 25.10.2015, which period was later regularized by the Railway Board vide order dated 29.02.2016 (Annexure A-6). The applicant was finally given a posting on 02.11.2015 (Annexure A-9).

8. The controversy is in regard to his overstaying in the DDA quarter by the applicant for 31 days since the applicant vacated the DDA quarter on 26.11.2015. The applicant had

requested the DDA vide Annexure A-14 letter dated 04.11.2015 to allow him to retain the said accommodation till 31.03.2016 on the ground of his daughter studying in class-X. This request was followed by his another letter dated 05.01.2016, addressed to Lieutenant Governor of Delhi. Eviction proceedings were started by the Estate Officer, much belatedly on 15.03.2016, i.e., after more than two months of the applicant having vacated the quarter in question. The applicant's overstay by 31 days is required to be dealt with in terms of SR-317-B-22, a copy of which is at Annexure A-15, which reads as under:

“SR 317-B-22

OVERSTAYAL IN RESIDENCE AFTER CANCELLATION OF ALLOTMENT

Where, after an allotment has been cancelled or is deemed to have been cancelled under any provision contained in these rules, the residence remains or has remained in occupation of the officer to whom it was allotted or of any person claiming through, such officer shall be liable to pay damages for use and occupation of the residence, services, furniture and garden charges, as may be determined by government from time to time;

Provided that an officer, in special cases, except in case of death and retirement or terminal leave, may be allowed by Directorate of Estates to retain a residence for a period not exceeding 6 months beyond the period permitted under SR 317-B-11(2), on payment of twice the flat rate of licence fee or twice the licence fee he was paying, whichever is higher.

Provided further that in the event of death of the allottee, his/her family shall be eligible to retain the Government accommodation for a further period of one year on payment of normal licence fee. The extended period of retention shall not be allowed in cases where the deceased officer or his/her dependents owns a house at the place of posting.”

9. No doubt the Tribunal would cease to have jurisdiction in the matter of official accommodation once the eviction proceedings have been started by the Estate Officer under the P.P. Act, as has been held by the Hon'ble Supreme Court and Hon'ble High Court in various judgments referred to in para (5) hereinabove. Here, the issue is limited to the overstaying of the applicant for just 31 days from 27.10.2015 to 26.11.2015 when the eviction proceedings were not in sight. Hence, I am of the view that the period of overstaying of the applicant is required to be dealt with strictly in accordance with SR-317-B-22.

10. It is pertinent to mention here that had the applicant been allotted government accommodation by his parent department and had not vacated the quarter allotted to him by the DDA even after that, then the matter would have been different. But this is not the case of the respondent. It is also seen that the respondent started demanding the disputed penal rent from the applicant after he had vacated the quarter by issuing a show cause notice. The respondent had not invoked the PP Act when the applicant was allegedly overstaying in the quarter. Hence, I hold that this Tribunal has the authority to adjudicate the matter.

11. In the conspectus of the discussions in the foregoing paras, the respondent is directed to charge licence fee/rental from the applicant for overstaying in Type-V, Quarter No.A-3,

Old Rajinder Nagar, New Delhi from 27.10.2015 to 26.11.2015 (31 days) in accordance with SR-317-B-22 and pass an appropriate order to this effect. The applicant shall pay rental/licence fee, in accordance with the order passed by the respondent. The OA is accordingly disposed of.

12. No order as to costs.

(K.N. Shrivastava)
Member (A)

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