

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.2434/2015

Order Reserved on: 25.08.2015
Order pronounced on 24.09.2015

Hon'ble Shri V. Ajay Kumar, Member (J)

Arun Mishra, Age 51 years
S/o Sh. M.P.Mishra
S.Q.No.7/12
Bhagwan Dass Road
New Delhi – 110 002.

.... Applicant

(By Advocate: Shri A.K.Behera)

Versus

1. DDA (Delhi Development Authority)

B-410, Vikas Sadan, INA

New Delhi – 110 023

Through its Vice Chairman.

... Respondent No.1

2. The Estate Officer (IV) Damages

DDA, A-Block, Vikas Sadan

New Delhi – 110 023.

... Respondent No.2

3. Government of NCT of Delhi

Through Chief Secretary

Secretariat Building, Delhi

Near I.T.O., Delhi.

... Respondent No.3

(By Advocate: Sh. Dhanesh Rahlan, Ms. Sangita Rai and Ms.
Sriparna Chatterjee)

ORDER

By V. Ajay Kumar, Member (J):

The brief facts of the case, as narrated by the applicant, are that the applicant, a DANICS cadre officer at JAG level, during the course of his appointment on deputation with the 1st Respondent-Delhi Development Authority (in short 'DDA') was allotted the residential quarters, i.e., DDA Officers Flats No.7/12, Bhagwan Dass Road, New Delhi as per his entitlement. He took possession of the said quarters on 17.04.2013.

2. When the applicant was repatriated to his parent department, i.e., 3rd Respondent-Govt. of NCTD, on 01.07.2014, the applicant, vide his letter dated 25.07.2014 (Annexure A4), requested to allow him to continue in the aforesaid quarters in lieu of the quarters under the Delhi Government General Pool Accommodation, i.e., Flat No.9, Delhi Administration Flats at 47, Rajpur Road, New Delhi being occupied by one Shri H.K.Bharti, Director (Planning), DDA, under the inter-pool exchange. The 3rd Respondent vide their letter dated 15.09.2014 (Annexure A5), requested the Commissioner-cum-Secretary, to accept the Type-V, 47/9, Delhi Govt. Flat, Rajpur Road, New Delhi which is in occupation of Shri H.K.Bharti, in inter-pool exchange, in lieu of 7/12, DDA Officers Flat, Bhagwan Dass Road, New Delhi which is in occupation of the applicant.

3. However, the 1st Respondent-DDA, without giving any reply to the letter of the 3rd Respondent dated 15.09.2014 and without consulting them, issued the impugned letter dated 12.05.2015 (Annexure A1) to the applicant by stating that his request for inter-pool exchange of the staff quarter has been considered but not acceded to, and directed to vacate the staff quarters which is in occupation of the applicant within 15 days of the issue of the said letter failing which eviction proceedings will be initiated. The said impugned letter dated 12.05.2015 was received by the applicant on 20.05.2015.

4. The applicant was served with a notice dated 18.05.2015 (received on 22.05.2015) (Annexure A7) from the 2nd Respondent-Estate Officer under Sub-Section 1, and Clause (b)(ii) of Sub Section 2 of Section 4 of the Public Premises (Eviction of Unauthorised occupants) Act, 1971 [hereinafter called as 'P.P.Act, 1971'], stating that the applicant is in unauthorised occupation of the Staff Quarter No.7/12, DDA Officers Bangla, Bhagwan Dass, New Delhi and called upon the applicant to show cause on or before 01.06.2015 why an order of eviction should not be made against him, and also to appear before him on the same date for personal hearing.

5. The applicant made representations dated 25.05.2015 and 26.05.2015 (Annexures A8 and A9 respectively) to the 1st Respondent-DDA, explaining his eligibility and the applicability of the Government instructions with regard to the inter-pool exchange of the staff

quarters, again requested for allowing him to continue in the staff quarter No.7/12, Bhagwan Dass Road, New Delhi. The 3rd Respondent-Govt. of NCTD also, vide their letter dated 28.05.2015 (Annexure A10) requested the 1st Respondent to accept the inter-pool exchange request of the applicant. The applicant, vide his representation dated 01.06.2015 (Annexure A11), requested the 2nd Respondent-Estate Officer, since the issue of allowing him to continue in the Staff Quarters at Bhagwan Dass Road, New Delhi, is under consideration by the 1st Respondent, the eviction proceedings may be kept in abeyance.

6. However, in the meanwhile, the 2nd Respondent-Estate Officer passed the impugned order in File No.EV/F-5(12)2012/SQ/Damage/1521, dated 26.06.2015 (Annexure A2), under Section 5(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and directed the applicant to vacate the premises within 15 days, failing which the applicant is liable to be evicted from the said premises.

7. Aggrieved by the aforesaid orders, the applicant filed the present OA seeking the following reliefs:

“a. Call for the records of the case;

b. Declare that the applicant is in lawful possession of SQ No.7/12, Bhagwan Dass Road, New Delhi by operation of OM Dt September 19, 2014.

c. Quash and set aside the order dated 12.5.2015 with all its consequences including that of the proceedings and order dated 26.6.2015 passed by the Estate Officer as bad in law.

d. Pass any such order or further order or direction which this Tribunal may deem fit and proper in the facts and circumstances of the case in favour of Applicant.

e. Award cost of litigation in favour of the applicant.”

8. This Tribunal, while issuing notice in the OA, by an interim order dated 09.07.2015, stayed the operation of the impugned order dated 26.06.2015 (Annexure A2), i.e., the order of the 2nd Respondent - Estate Officer, passed under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

9. The 1st Respondent-DDA, questioned the said interim stay order by filing WP(C) No.7279/2015 mainly on the ground that the Tribunal has no jurisdiction to entertain the OA against the orders passed under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The Hon'ble High Court of Delhi by its order dated 04.08.2015, disposed of the Writ Petition as under:

“7. We find it rather strange that the CAT has stayed the order passed by the Estate Officer under the PP Act, against which an appeal lies to the District Judge.

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.

10. With these observations, the writ petition is disposed of."

10. Heard Shri A.K.Behera, the learned counsel for the applicant and Shri Dhanesh Rahlan, Ms. Sangita Rai and Ms. Sriparna Chatterjee, the learned counsel for the respondents, and have perused the pleadings on record.

11. When the OA was taken up for hearing, it is submitted that the applicant approached the competent court of District and Sessions Judge, New Delhi against one of the impugned orders dated 26.06.2015 (Annexure A2), i.e., the order of the Estate Officer passed under P.P.Act, 1971, and that the said Court has stayed the same in PPA No.72/2015 dated 14.08.2015.

12. In view of the orders of the Hon'ble High Court, the preliminary issue of maintainability of the OA is to be determined first.

13. The learned counsel for the applicant categorically stated that he is not pressing the relief in so far as the challenge to one of the impugned orders dated 26.06.2015 (Annexure A2), passed by the

Estate Officer, in view of the aforesaid orders of the Hon'ble High Court.

14. However, the learned counsel for the applicant, contends that the OA is very much maintainable in so far as the challenge to the another impugned order dated 12.05.2015 (Annexure A1), passed by the 1st Respondent-DDA, as the same is purely an administrative order. It is further submitted that Annexure A1 dated 12.05.2015 of the 1st Respondent-DDA, is an independent order, passed in terms of various Government instructions pertaining to inter-pool exchange of the staff quarters, and is nothing to do with the orders of the Estate Officer. The fact that in pursuance of the order dated 12.05.2015 of the 1st Respondent-DDA, eviction proceedings have been initiated and concluded by the 2nd Respondent-Estate Officer, cannot take away the right of the applicant to question the order dated 12.05.2015, before this Tribunal.

15. Per contra, Shri Dhanesh Rahlan, the learned counsel appearing for the 1st Respondent-DDA, contended that the impugned Annexure A1 dated 12.05.2015 of the DDA and the impugned Annexure A2, dated 26.06.2015 of the Estate Officer cannot be separated for the purpose of maintainability of the OA, as the Annexure A1 had been merged with the Annexure A2. It is further submitted that once an order under Section 5(1) of the PP Act, 1971, is passed, the order

dated 12.05.2015 lost its significance and hence, cannot be questioned independently.

16. In view of the aforesaid rival contentions the following questions arose for our determination:

- a) Whether the OA is maintainable independently against the order dated 12.05.2015 of the 1st Respondent-DDA?
- b) Whether the order dated 12.05.2015 of the 1st Respondent-DDA is valid and sustainable?

17. As rightly contended by the learned counsel for the applicant, that the impugned Annexure A1 dated 12.05.2015 of the 1st Respondent-DDA is purely an administrative order whereunder the request of the applicant for inter-pool exchange of the staff quarter was rejected. Any public servant can question an administrative order, if he is aggrieved, under Section 19 of the Administrative Tribunals Act, 1985. The decisions of the Hon'ble Apex Court in **Union of India v. Rasila Ram and Others**, (2001) 10 SCC 623 and of the Hon'ble High Court and of this Tribunal are applicable only, if the challenge is to the orders passed by the Estate Officer under the P.P.Act, 1971. Accordingly, we hold that the OA is maintainable to the extent of questioning the Annexure A1 Order dated 12.05.2015 of the 1st Respondent-DDA. Since it is an admitted case of both sides that the OA is not maintainable with regard to the challenge to the order dated 26.06.2015 of the 2nd Respondent-Estate Officer passed under

P.P.Act, 1971, the various decisions in respect of the said issue need not be gone into.

18. The issue of inter-pool exchange between General Pool Residential Accommodation and Departmental Pool and Inter-pool transfer of accommodation within General Pool in Delhi, is governed by Office Memorandum dated 03.11.1993, and OM dated 01.05.1997, as reviewed and superseded by OM dated 19.09.2014 (Annexure A6) of the Ministry of Urban Development [Directorate of Estates]. The relevant paragraphs No.2, 3, 4 and 10 of the said OM dated 19.09.2014 read as under:

"2. The Officers of All India Services and Central Government officers and employees who are on deputation/mandatory posting/transfer to other Departments of the Government of India, which have Departmental Pools, Lok Sabha and Rajya Sabha Secretariates, Government of NCT of Delhi, DDA, various Municipal Corporations of Delhi and NDMC shall be eligible to apply for inter-pool exchange of accommodation.

3. Regularisation of general pool residential accommodation in lieu of Departmental Pool accommodation and vice versa shall be made to the officers mentioned in para 2 above.

4. Where an officer in occupation of General Pool residential accommodation has gone to offices mentioned above and in return another officer has come to serve the Government of India from such office along with an accommodation, inter-pool exchange with Departmental Pool may be allowed on one to one to one basis subject to provision of accommodations are of the same type.

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10. The requests for inter-pool exchange shall be processed by the concerned Allotment Sections. CDN-I Section shall continue to be the nodal section for inter-pool exchange and all Allotment Sections shall intimate CDN-I Section on such exchanges. All such inter-pool exchanges and retention are subject to conditions laid down in Annexure to this OM."

19. The learned counsel for the applicant submits that he is fully covered for consideration of inter-pool exchange under the OM dated 19.09.2014. The respondent considered similar requests of number of similar persons for inter-pool exchange of staff quarters and denying the said benefit to the applicant alone, is illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India. The applicant, while drawing attention of this Tribunal to Annexure A14 and Annexure A16, submits that the officers mentioned therein are identically placed like the applicant and are being allowed inter-pool exchange of staff quarters, submits that denying the same to him is arbitrary. The learned counsel placed reliance on a Notification of the Ministry of Home Affairs, dated 21.05.2015, issued under Articles 239 and 239AA of the Constitution of India to contend that the aforesaid O.Ms are applicable to him.

20. The learned counsel further submits that though similar request has been made by Shri Bharti, against whose quarter the applicant is seeking inter-pool exchange, the respondents have not rejected his request but rejected the identical request of the applicant without assigning any reasons.

21. Shri Danesh Rahlan, the learned counsel appearing for the 1st Respondent-DDA, submits that the applicant is liable to vacate the staff quarters which is in his occupation, once he was repatriated to his

parent department, i.e, the 3rd Respondent-GNCTD. However, without vacating the same, he made the request for inter-pool exchange.

22. The learned counsel further submits that the OM dated 19.09.2014 has no application to the applicant and that as per the subsequent clarification OM dated 24.04.2015 (Annexure R1), the applicant is not entitled for inter-pool exchange. It is also submitted that as clarified under the said OM dated 24.04.2015, for an inter-pool accommodation, one of the accommodations has to be a General Pool accommodation. In the present case, both the accommodations, i.e., in the possession of the applicant or Shri H.L.Bharti are not General Pool accommodations, as none of the same are under the control of the Directorate of Estates, Government of India and thus no inter-pool exchange can at all take place.

23. It is also submitted that the applicant was repatriated from DDA to his parent Department, i.e., GNCTD on 01.07.2014 and that the permissible period of two months had been expired on 01.09.2014, and hence, the OM dated 19.09.2014 has no application to the applicant, as the same has only prospective effect.

24. Mrs. Sangeeta Rai, the learned counsel appearing for the 3rd Respondent-GNCTD, by drawing attention to the averments made in their counter fully supports the cause of the applicant and submits that in view of the OM of 1993 and the subsequent OMs the applicant is entitled for consideration for inter-pool exchange of staff quarters, and in any event, when the 3rd Respondent requested vide its letters to

accept the request of the applicant as the same is in accordance with the rules and established procedure, the 1st Respondent cannot unilaterally issued the impugned order dated 12.05.2015.

25. A bare reading of the Office Memorandum dated 03.11.1993 (Annexure A15), supports the contention of the 3rd Respondent-GNCTD. Further, inter-pool exchange was permitted by the 1st Respondent-DDA prior to OM dated 19.09.2014 and also thereafter, as evidenced by the documents on record.

26. The inter-pool exchange of staff quarters is formulated for the benefit of the officers and also thereby to the effective administration. When the 3rd Respondent-GNCTD, with whom, admittedly, the 1st Respondent-DDA exchanged number of staff quarters, as per the inter-pool exchange policy, and when the GNCTD's contention is that the applicant's request for inter-pool exchange of staff quarter is valid and genuine, as per rules and established procedure, the 3rd Respondent-DDA ought not have issued the impugned Annexure A1 dated 12.05.2015, rejecting the request of the applicant without consulting the 3rd Respondent GNCTD and without assigning any reasons.

27. The contention of the 1st Respondent-DDA that the applicant does not fall within the definition of All India Services and Central Govt. Offices and employees, who are on deputation/mandatory posting /transfers to other departments of the Govt. of India, i.e., under para 2 of the OM dated 19.09.2014 cannot be accepted in view of the Notification dated 21.05.2015 issued under Article 239 and Sub-

Clause (a) of Clause (III) of Article 239AA of the Constitution of India. It is also not forthcoming how the applicant is different from those officers who are allowed to exchange the staff quarters under the inter-pool exchange policy. Further, the doctrine of merger, in our view, has no application when comparing an administrative order and an order passed under the provisions of a Statute.

28. In the circumstances, the 1st Respondent-DDA is directed to reconsider the issue of allowing the applicant for inter-pool exchange of staff quarters in consultation with the 3rd Respondent-GNCTD, and to pass an appropriate speaking and reasoned orders, in accordance with law. The OA with regard to relief of praying for quashing of order dated 26.06.2015 of the 2nd Respondent-Estate Officer, and the issue of overstay in a Government accommodation and its consequences are dismissed as not pressed and also as the same is being agitated before the competent Court of District and Sessions Judge, New Delhi, as per the leave granted by the Hon'ble High Court.

The OA is disposed as indicated above. No costs.

(V. Ajay Kumar)
Member (J)

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