

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-2017/2015

Reserved on : 22.08.2016.

Pronounced on : 30.08.2016.

Hon'ble Mr. Shekhar Agarwal, Member (A)

Ms. Susheela Kumari, 50 years
W/o Sh. Mohan Prakash Dubey,
E/o Directorate of Education,
Govt. of NCT of Delhi,
Ishani Sarvodaya Kanya Vidayala,
G-Block, Saket, New Delhi-17.
R/o 25/5, Sector-1, Pushp Vihar,
New Delhi-17.

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Applicant

(through Ms. Sonia Arora, Advocate)

Versus

1. Union of India through
Secretary,
Ministry of Urban Development,
Nirman Bhawan, New Delhi-110011.
2. Director, Directorate of Estates,
Govt. of India, Nirman Bhawan,
New Delhi-110011.
3. Govt. of NCT of Delhi through
Chief Secretary,
Govt. of NCT of Delhi,
Delhi Secretariat,
New Delhi-110002.
4. Secretary,
Public Works Department and Housing,
Govt. of NCT of Delhi,
5th Level, 'B' Wingh,
Delhi Secretariat,
New Delhi-110002.

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Respondents

(through Sh. VSR Krishna and Ms. Sangita Rai with Sh. Pradeep Singh Tomar, Advocates)

ORDER

The applicant is working as Librarian with GNCT of Delhi since 18.10.1989. According to her since 01.04.1994 she has been residing in Central Government accommodation allotted to her husband and has not been drawing HRA. Her husband retired on superannuation on 31.07.2014. The applicant submitted an application on 06.01.2015 to the respondents No. 1 & 4 i.e. Govt. of NCT of Delhi and Secretary, PWD, GNCT of Delhi for allotment of a quarter of GNCT of Delhi pool to her. Thereafter, on 05.02.2015, she submitted an application for inter pool exchange of government accommodation of GNCT of Delhi quarter to be allotted to her with general pool accommodation in which her husband was residing as per O.M. dated 03.11.1993. Another representation was submitted on 21.03.2015. She also submitted a representation to respondent No. 2 on 27.03.2015 for regularisation of accommodation allotted to her husband in her name. This was followed by another representation dated 21.04.2015. On 25.03.2015, the applicant obtained information under the RTI Act regarding number of inter-pool exchanges allowed by the respondents. However, when no response was forthcoming from the respondents, she filed OA-1225/2015 before this Tribunal. This was disposed of by the Tribunal

on 28.04.2015 with a direction to the respondents to take a decision on the representation of the applicant and communicate the same by means of a reasoned and speaking order. In compliance thereof, the respondents have passed the impugned order dated 14.05.2015 by which representation of the applicant dated 27.03.2015 has been rejected. The applicant has now approached this Tribunal by filing the present O.A.

2. The applicant has relied, mainly, on the O.M. dated 03.11.1993 (page-39 of the paper-book) of the Directorate of Estates regarding inter-pool exchange of government accommodation. She has further submitted that Government has permitted such exchange in the past but she was being discriminated against as the same facility was being denied to her. She has obtained information through RTI through which she has come to know that in the past House No. 50-B, Type-IV, Mayur Vihar and house Nos. 767 and 768, Type-III, Timarpur have been exchanged under the inter-pool transfer.

3. In their reply, the respondents have submitted that the applicant, who is a Librarian with GNCT of Delhi, was not eligible to be allotted pool accommodation of the Directorate of Estates, Government of India. In this regard, they have drawn my attention to their O.M. dated 18.02.2014 and submitted that inter-pool exchange was permissible only amongst the staff of offices declared

specifically eligible by the Central Government. The teachers of schools of Delhi Administration (Librarians are treated at par with teachers) were never declared eligible under this category. They have also drawn my attention to their O.M. dated 27.12.1991 in which, *inter alia*, the following is laid down:-

“13. Eligibility of teachers and other staff working in the s of GNCT of Delhi.

It has been decided that the teachers and other staff of the schools of Delhi Administration will not be eligible for initial allotment from General Pool in Delhi. However, the allotments already made to them by the Directorate of Estates will not be disturbed and will continue to be treated as lawful allotments. It has also been decided that change allotment in the same type will also be admissible to teachers and other staff of schools of Delhi Administration who are already allottees of General Pool accommodation. Those who are already registered for in-turn change will be allowed their due seniority for such change of accommodation in the same type. It has also been decided that any consequential benefits which may accrue to an allottee under the allotment rules on account of his being in occupation of General Pool accommodation will also be admissible to them i.e. they will be allowed retention after cancellation of allotment admissible under SR-317-B-22, temporary allotment for marriage purposes, regularisation on retirement/death grounds to their wards in case their ward is employed in an eligible office. However, the benefit of regularisation on retirement/death will not be admissible to ward of such allottees in case the ward is employed as teacher or in the staff of a school in the Delhi Administration.”

4. I have heard both sides and have perused the material placed on record. The applicant has relied primarily on equality of treatment. According to her when such exchanges have been allowed in the past, there was no reason why she should be treated any differently. On this issue, she has relied on several judgments

wherein equality of treatment has been emphasised and relief was granted on the basis of the same. The judgments relied upon by her are:-

(i) **Ramana Dayaram Shetty Vs. IA Authority of India & Ors.**, AIR 1979 SC 1628.

(ii) **Darshan Jain Vs. Delhi Administration & Ors.**, 2008 V AD DELHI 1.

(iii) **Nirmal Verma Vs. MCD & Anr.**, (WP(C) No. 3303/2003) decided by Hon'ble High Court of Delhi on 18.03.2005.

(iv) **S.K. Saxena Vs. UOI & Ors.**, (OA-740/2010) decided by PB of CAT on 08.04.2011.

5. Respondents No.1 & 2, on the other hand, asserted that inter-pool exchange of the government accommodation was confined to only eligible employees. In the instant case, the applicant did not fall under that category as teachers/librarians of GNCT of Delhi were not entitled to the pool accommodation under the Central Government. Hence, the case of the applicant was rejected.

6. Respondents No. 3 & 4 have filed reply in which they have submitted that Flat No. 4, Type-IV, Upper Bela Road had been allotted to the applicant but she has not given acceptance for the same. She is, therefore, at fault for not accepting the allotted flat and also losing the opportunity of inter-pool exchange.

7. From the facts mentioned above, it is evident that the husband of the applicant was an employee of Government of India whereas

the applicant is an employee of GNCT of Delhi. While the husband of the applicant was entitled to pool accommodation of Directorate of Estates, Government of India, the applicant is entitled to accommodation of Government of NCT of Delhi. The respondents have successfully shown that as per provisions of O.M. dated 27.12.1991 the teachers/librarians of GNCT of Delhi were not eligible for accommodation of Directorate of Estates. That being the case, as per consolidated instructions issued by Directorate of Estates dated 18.02.2014, the benefit of para-2(ii) also relied upon by the applicant cannot be granted to the applicant. The aforesaid para reads as follows:-

"In the event of retirement of the allottee, the same accommodation may be regularized in the name of the eligible spouse/ward of the retiring allottee if he/she is entitled for it and, if not, an alternative accommodation of entitled lower type may be allotted to him/her on payment of normal licence fee irrespective of the fact whether the eligible spouse/ward had been residing with the allottee prior to the retirement of the allottee, subject to fulfillment of the following conditions:-

a) In case the spouse/ward has been residing continuously with the retiring allottee, he/she has not drawn house rent allowance for this period;....."

8. Thus, the applicant would not get benefit of the aforesaid para being ineligible spouse of the retiring allottee.

9. The applicant has relied on several judgments and claimed equality of treatment on the ground that in the past such inter-pool

exchange has been allowed by the respondents. However, the details furnished by the applicant as to the circumstances under which such inter-pool exchange was allowed in some cases mentioned above are insufficient to draw any conclusion. In any case, negative equality cannot be the ground for seeking any relief. If a mistake has been committed in the past, there is no reason why the same should be repeated.

10. I, therefore, find that there is no merit in this O.A. and the same is dismissed. No costs.

(Shekhar Agarwal)
Member (A)

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