

***Central Administrative Tribunal  
Principal Bench***

OA No.2853/2015

Order reserved on: 19.08.2016

Pronounced on: 21.09.2016

***Hon'ble Mr. V.N. Gaur, Member (A)***

Narender Kumar Kataria, Aged 44 years,  
S/o Sh. D.S. Kataria,  
Working as Engineering Assistant,  
Doordarshan Kendra, New Delhi  
r/o Quarter No. J-945, Kalibari Marg,  
New Delhi.

-Applicant

(By Advocate: Mr. Yogesh Sharma)

***-Versus-***

1. Union of India through  
Secretary,  
Ministry of Urban Development,  
Govt. of India,  
Nirman Bhawan,  
New Delhi.

2. The Deputy Director of Estates (A-II),  
Govt. of India,  
Directorate of Estates,  
Nirman Bhawan,  
New Delhi.

-Respondents

(By Advocate: Mr. Duli Chand)

***O R D E R***

The applicant is aggrieved by the order dated 17.09.2014 by which the Directorate of Estates had cancelled the allotment of his Type-II house no. J-945, Kalibari Marg, New Delhi and the order dated

02.07.2015 rejecting the request of the applicant for regularisation of the aforementioned house.

2. The brief facts of the case are that the father of the applicant was also a Government servant and was allotted Government accommodation H.No.J-945, Kalibari Marg, New Delhi. After retirement of father on 30.10.1996 the applicant applied for regularisation of the same house in his name as per the rules and the same was acceded to by the respondents. The order dated 02.04.1997 was issued by the Directorate of Estates regularising the aforementioned house in the name of the applicant. The applicant joined South Delhi Municipal Corporation (SDMC) on deputation on 22.04.2013. The applicant made a representation to allow him to retain his house No.J-945, Kalibari Marg on educational grounds, which was permitted only for 6 months after payment of enhanced licence fee in accordance with the rules. The extended retention period of the house also expired on 21.12.2013. He also applied for permission to retain that house for the period of his deputation to SDMC. However, SDMC not being in the eligible category for allotment of General Pool accommodation, his representation was rejected by the respondents and the allotment was cancelled. The applicant filed this OA on 31.07.2015 and by order dated 05.08.2015 this Tribunal allowed him to continue in that house as an interim measure.

3. Learned counsel for the applicant argued that the allotment of H.No.J-945, Kalibari Marg, New Delhi to the applicant was done in accordance with the rules which allowed regularisation of the house in

the name of the son/daughter of a retired Government employee for that category of house. The applicant was also a beneficiary of such dispensation. In the allotment order which was given on 02.04.1997 there was no mention of any ad hoc/temporary allotment. When the applicant applied for permission to retain that house while on deputation to SDMC, the respondents started showing that house as an ad hoc allotment in the name of the applicant. The respondents did not respond to his aforesaid request and instead cancelled the allotment vide letter dated 17.09.2014 without giving any notice. The applicant appeared before the Estate Officer in response to a notice. The Estate Officer advised the applicant to come back to his parent organisation to retain his accommodation. He then reverted to his parent department, Doordarshan Kendra on 06.01.2015 and again became eligible for General Pool accommodation. When he applied for such regularisation, the respondents rejected his representation by letter dated 02.07.2015. According to learned counsel, the cancellation of the allotment of house without giving a show cause notice by itself was sufficient to quash that order, being against the principle of natural justice.

4. Learned counsel for the respondent, on the other hand, submitted that the applicant became ineligible for Kalibari Marg accommodation from General Pool the moment he shifted to SDMC, which was an ineligible organisation for the purpose of allotment of a house from General Pool. The allotment was cancelled w.e.f. 22.06.2013 but later, on humanitarian ground and educational ground, the respondents allowed him to retain the aforementioned house till 21.12.2013 on

payment of prescribed licence fee. The applicant, however, even after that period has not vacated the house. He further submitted that according to the instructions dated 10.08.2010 (Annexure-3 of the OA) in cases where posting in ineligible organisations goes beyond the period of eight months, damage rate of licence will be charged for the period beyond eight months and regularisation will be allowed only if the date of priority is covered. The priority date of the applicant does not come within the consideration zone.

5. We have heard the learned counsel for the parties and perused the record. Para 3 of the OM dated 10.08.2010 reads as follows:

“In cases, where re-posting in eligible organization takes place beyond the permissible period of retention of eight months, damage rate of licence fee will be charged for the period beyond eight months and regularisation will be allowed only if the date of priority is covered.”

6. It is not disputed that the applicant went on deputation to SDMC, an ineligible organisation for allotment of General Pool accommodation by the Central Government. The applicant had made a representation for allowing him to continue in that accommodation while serving SDMC on deputation. The respondents, however, did not agree and cancelled the allotment without a show cause notice. The applicant, with a view to retaining the house, prematurely reverted to his parent organisation and promptly applied for regularisation of the house in his name. The respondents, however, have rejected the request by letter dated 02.07.2015 which reads as follows:

“I am directed to refer to your Endorsement No.9 (1)12-13/Gen dated 27.05.2015 on the above subject and to say that as per the rule “Regularisation will be considered only in cases where re-posting takes place within the permissible retention period of eight

months (2+6) Retention beyond the permissible period will be treated as unauthorised and charged at damage rate. If re-posting in eligible office takes place beyond the permissible retention period, regularization will be considered only if date of priority is covered." Since Shri N.K. Kataria, an ad-hoc allottee, date of priority in Kalibari Marg, New Delhi is not covered. Therefore, Quarter No. J-945, Kalibari Marg, New Delhi cannot be regularised in the name of Shri N.K. Kataria, Engg. Asstt., New Delhi. Hence, the request for regularisation of the said quarter is rejected and no correspondence will be entertained in future. You are also requested to convey Shri N.K. Kataria to vacate the above quarter immediately to avoid the heavy damages charges."

7. Learned counsel for the respondents submits that applicant was given a very sympathetic consideration and was allowed to retain the house on education ground for about six months even after the cancellation of aforesaid house. The rules, however, did not permit to allot that house in his name since he is not covered according to the criteria of date of priority. The main issue before this Court now is – what is the date of priority of the applicant, which is the basis for regularisation in terms of the OM dated 10.08.2010. The learned counsel for the respondents was directed on 12.08.2016 to intimate the present date of priority for the new allotment in that category. Learned counsel submitted a copy of the letter dated 18.08.2016 addressed to him by the Directorate of Estates which states as follows:

"Sub: O.A. No.2853/2015 in the matter of Sh. N.K. Kataria vs. Union of India.

Sir,

I am directed to refer to your letter No. OA/2853/15/NKK/15-16 dated 12.08.2016 on the above subject and to inform that the date of priority (28.07.1994) of Shri N.K. Kataria is not covered in Kali Bari Marg, New Delhi. It is further inform that date of priority (1978) for ground floor in the month of April, 2016 and date of priority (1992) for Third Floor in the month of June, 2016 have been covered for allotment of govt. accommodation in the Kali Bari Marg Area, New Delhi as per record. Copy of the allotment list enclosed."

8. The date of priority of the applicant has been indicated as 28.07.1994. It is noted that the applicant was allotted this house by an order of the Estate Officer dated 02.04.1997 after the retirement of his father on 31.10.1996. The respondents submitted that such an allotment was on 'ad hoc' basis and the applicant's date of priority was 28.07.1994, while presently the employees with priority dates 1978 and 1972 are being considered for allotment of flats in that area. This argument is not tenable as the respondents themselves allotted the house at Kali Bari Marg to the applicant in 1997 in accordance with the rules, making him eligible to that house at that time despite the priority of the applicant being much lower. In other words the applicant on the date of allotment in 1997 was deemed to be covered by the date of priority. The word 'ad hoc' used at later date does not change the factual position that neither the original allotment letter use the word 'ad hoc' nor the allotment was for a specific period. The applicant has been living in that house for about 18 years after the so called 'ad hoc' allotment with the consent of the respondents and therefore the word 'ad hoc' is no more significant in his context. At this stage the respondents can not overlook the fact that the applicant was treated as eligible for that house in 1997 albeit under some scheme, and that fact can not be change with time. The applicant continues to be eligible for that house as his short deputation in between can not change the eligibility. It is also noteworthy that his allotment was cancelled without giving him a show cause notice. Further he has already been charged market rent till the date of his return to his parent organisation regularising the entire period of overstay. Since the

applicant is now entitled for the General Pool accommodation and respondents have already considered him eligible for the house No.J-945, Kalibari Marg under his possession, as discussed earlier in this para, his case can not be rejected on the ground of date of priority.

9. With the above finding with regard to the date of priority of the applicant, the respondent are directed to regularise the house allotted to the applicant in 1997 at J-945, Kalibari Marg, New Delhi, with effect from the date of his return to his parent department. This exercise may be completed within 4 weeks from the date a copy of this order is received by the respondents.

( V.N. Gaur )  
Member (A)

‘sd’

September 21, 2016