

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

OA-3140/2016

Reserved on : 16.11.2017.

Pronounced on : 18.12.2017.

Hon'ble Ms. Praveen Mahajan, Member, Member (A)

Mr. Himmat Singh Chauhan, Aged 53 years
S/o Sh. Uday Singh,
R/o Govt. Quarter No. 101,
L-Block, Sarojini Nagar,
New Delhi.

..... **Applicant**

(through Sh. Yogesh Sharma, Advocate)

Versus

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

2. The Asstt. Director of Estate/Superintendent (A/Cs),
Directorate of Estates, Nirman Bhawan,
New Delhi. **Respondents**

(through Sh. Krishna Kumar, Advocate)

ORDER

The applicant has filed the present O.A. seeking the following relief:-

"That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 12.05.2016 and order dated 20.05.2016 and order dated 05.07.2016 declaring to the effect that the same are illegal arbitrary and consequently pass and order of regularizing the quarter in question on the name of applicant."

2. Briefly stated, the facts of the case are that the applicant is working as Steno 'D' in the Ministry of Environment Forest and Climate Change. It is submitted that government accommodation No. 101, Block-L, Sarojini Nagar, New Delhi was allotted to the applicant w.e.f. 30.09.1991.

3. On 14.02.2014, the applicant was posted as Private Secretary in the Airport Economic Regulatory Authority of India (AERA) on deputation basis. Subsequently, he has been repatriated to his parent department, on his own request, on 21.06.2016.

4. The applicant states that AERA came into force recently. As per the normal known norms, a Government servant, posted in any new authority, can retain the quarter for five years in respect of his parent department. The applicant states that he joined AERA on deputation basis for three years only due to this condition. He continued to submit his cheques for HRA and licence fee etc. in a timely manner.

5. The applicant received the impugned order dated 12.05.2016 (Annex. A/1) by which government accommodation of the applicant has been cancelled with retrospective effect w.e.f. 12.05.2014 and by which the respondents have decided to charge the damage rent of Rs. 14800/- p.m. from him. The respondents

have worked out damages of Rs. 3,48,994/- and directed the applicant to deposit the same within 15 days (Annex.A/2).

6. Against these two orders, the applicant submitted a detailed representation dated 02.06.2016 (Annex. A/3) to the Director, Directorate of Estates. The same has been rejected vide order dated 05.07.2016 (Annex. A/5) without assigning any reasons. The applicant contends that he was sent on deputation for three years on 14.02.2014 when the five years period was not completed from the date of existence of AERA, which was exempt for retention of quarter for those who were posted in AERA on deputation basis. He states that he was under the bona fide impression that his case is also covered under five years condition and that is why the applicant continued to submit his licence fee every month. Had the respondent No. 2 passed an order of cancellation of his quarter, earlier, the applicant would have sought repatriation to his parent department immediately, to avoid this harassment. He avers that as per Government of India O.M. dated 10.08.2010, the applicant is entitled for regularization of his quarter on his rejoicing in the parent department. Aggrieved by the action of the respondents, he has filed the current O.A.

7. In the counter, the respondents state that as per guidelines of O.M. dated 12.10.2000 the officers are allowed to retain general

pool accommodation which they were occupying for a maximum period of five years. The respondents have also raised the question that the Tribunal has no jurisdiction because Public Premises Act is a special law and would prevail over Administrative Tribunals Act. They contend that this O.A. is not maintainable in view of the latest decision of the Tribunal in the case of **Om Prakash Kant Vs. UOI & Ors.** (OA-4136/2016) dated 23.12.2016.

8. At the outset, I deal with the primary objection of the respondents that the O.A. is not maintainable on the ground that proceeding under Sections 7 and 9(2) of Public Premises (Eviction of unauthorized occupants) Act, 1971 (hereinafter referred to as PP Act) have already been initiated for recovery of penal rent etc. for unauthorized occupation of the government accommodation.

9. The respondents stated that unauthorized occupation of government accommodation by the applicant is not a service matter and hence, the Tribunal has no jurisdiction over the issue.

This Tribunal in **OA No.4136/2016** dated 23.12.2016 observed as under:-

“7.1 I have considered the aforesaid judgment. This Tribunal had clearly come to the conclusion that in so far as eviction proceedings were concerned, this Tribunal has no jurisdiction. The same is the case herein as the order challenged in the present O.A. is a show cause notice issued under the PPE Act, 1971. The order

dated 12.11.2016 regarding cancellation of the accommodation No. C-1/91, Moti Bagh allotted to the applicant merges in the show cause notice issued on 06.12.2016 under the PPE Act, 1971. Consequently, the ratio of Hon'ble Supreme Court judgment in the **Rasila Ram's** case (supra) would apply in this matter.

8. In view of the aforesaid, I agree with learned counsel for the respondents and am of the opinion that this O.A. is not maintainable for want of jurisdiction. Accordingly, it is dismissed. The applicant shall, however, have liberty to approach appropriate forum, if so advised. No costs."

10. Learned counsel for the applicant Sh. Yogesh Sharma submits that the applicant was allotted residential accommodation under service rules. In his case, the allotment of accommodation is a service condition, hence the judgment cited by the respondents has no application in the case. He also submitted that only eviction can be challenged under the PP Act but cancellation, as requested for by the applicant in the current O.A. cannot be challenged under the same, which is rightly covered as a service matter as defined under Section-3(q)(v) of the AT Act, 1985. Thus, the application made under Section-19 by the applicant in the present case, aggrieved by any order pertaining thereto, issued by the concerned authority is maintainable before the Tribunal.

11. I feel that the facts and circumstances of the judgments cited by the respondents are different from the facts of the present case

and the ratio laid down is not applicable to the present case. I, therefore, hold that this O.A. is maintainable before this Tribunal.

12. The learned counsel for the applicant, in support of his averments, placed reliance on the following judgments:-

- (i) **OA-1706/2013** (Deepak Kumar Vs. UOI & Ors.) dated 21.03.2016.
- (ii) **OA-2853/2015** (Narender Kumar Kataria Vs. UOI & Ors.) dated 21.09.2016.
- (iii) **OA-196/2013** (Mrs. Nishi Saraswat Vs. KVS & Ors.) dated 06.05.2013.

13. It is not disputed that the applicant was posted on 14.02.2014 as Private Secretary in AERA on deputation basis, when five years period was not completed for AERA from the date of its existence and, five years time was exempted for retention of quarter, for those, who were posted in AERA on deputation basis. The applicant was under the bona fide impression that his case is covered under the said five years and continued to submit his licence fee etc. every month. Had the respondents issued an order cancelling the government accommodation allotted to him earlier, the applicant could have requested for repatriation to his parent department immediately on receiving the said order, and sought regularization of the same. It is also not disputed that the applicant continued to pay

his licence fee and submitted his cheques for HRA etc. continuously without any delay on his part (which have now been returned by the respondents). The moment he received the impugned order dated 12.05.2016 informing him that his government accommodation has been cancelled with retrospective effect w.e.f. 12.05.2014, he sought repatriation to his parent department.

14. It is relevant to note that the respondents issued the impugned letter cancelling the government accommodation of the applicant two years after completion of the exempted period of five years of AERA. I find substantial merit in the submissions of the learned counsel for the applicant that the respondents have unreasonably rejected the case for regularization of the applicant's quarter w.e.f. 12.05.2014. Since the applicant had submitted his licence fee every month, the respondents cannot now turn around and say that they were not aware of the continuous (unauthorized) occupation of the government accommodation allotted to him.

15. The respondents have overlooked the fact that the applicant still continues to be eligible for the accommodation he is occupying. His short deputation cannot change his eligibility. They have totally ignored the fact that the applicant who has been residing in the allotted quarter for almost 26 years had not defaulted on any other account, like payment of licence fee, conduct of good behaviour

etc. The very fact that he sought repatriation immediately after getting to know that being on deputation did not entitle him for retaining the accommodation, proves his bona fide belief that the accommodation was contiguous to his period of deputation. The averment of the respondents is that the applicant should have applied for retention/regularization of his overstay/unauthorized occupation instead of forwarding cheques on account of house rent and licence fee through AERA. However, the fact that applicant promptly applied for premature repatriation after receiving the impugned letter dated 12.05.2016 shows that he believed that occupation and continuation of a staff etc. was co terminus with the deputation period.

16. In view of the aforesaid facts, the O.A. is allowed and the impugned Annexure-A1 dated 12.05.2016 is quashed and set aside. The respondent authorities are directed to regularize the government accommodation No. 101, L-Block, Sarojini Nagar, New Delhi w.e.f. 12.05.2014 of the applicant by taking a holistic view of the situation rather than deciding the issue on technicalities. This exercise may be completed within a period of 03 months from the date of receipt of a certified copy of this order.

17. The applicant is also directed to pay the normal licence fee and electricity charges etc. for the said period i.e. from 12.05.2014

onwards, if not already paid, as per Rules, within 60 days from the date of receipt of a certified copy of this order. No costs.

(Praveen Mahajan)
Member (A)

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