

**Central Administrative Tribunal
Principal Bench**

OA No. 3064/2018

Order reserved on: 06.09.2018
Order pronounced on : 19.09.2018

Hon'ble Mr. Pradeep Kumar, Member (A)

Mahender Singh Bisht
Designation: Constable, CBI (HQ),
Group-C, Age: 43 years,
Ministry of Home Affairs,
S/o Sh. Hira Singh Bisht,
R/o Qtr. No.57, Sector-1,
Tyoe-3, Sadiq Nagar,
New Delhi.

... Applicant

(By Advocate: Sh. S.C.Sagar)

Versus

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

2. Asstt. Director of Estate,
Directorate of Estate,
Office of the Director,
Nirman Bhawan,
New Delhi.

... Respondents

(By Advocate: Sh. Shailender Tiwari)

ORDER

Sh. S.C.Sagar, learned counsel for applicant made his presentation and Sh. Shailender Tiwari, learned counsel for respondents made his presentation.

2. The present applicant Sh. Mahender Singh Bisht joined Central Bureau of Investigation (CBI) as Constable on 03.05.2004. At that time his father Sh. Hira Singh Bisht was also serving in CBI as an Inspector from where he retired on 30.11.2009. A Type-III quarter was allotted to Sh. Hira Singh Bisht while he was working as Inspector in CBI. Sh. Mahender Singh Bisht did not take payment of HRA w.e.f. 16.02.2007 and on retirement of his father he represented for allotment of the same quarter on the plea that his father was not well and his sister was mentally challenged. This was considered by the respondents and vide their letter dated 15.04.2010 the request to allot the same quarter was rejected on the plea that for the three years period immediately preceding the date of retirement of his father, the condition in respect of non-drawal of HRA by Sh. Mahender Singh Bisht was not fulfilled. Accordingly, the directions were issued that Sh. Hira Singh Bisht may vacate the quarter after availing of the concessional period as admissible on retirement of the allottee (Shri Hira Singh Bisht).

3. The applicant approached the Tribunal in OA No.3490/2010 which was decided on 25.10.2010 with a direction to the respondents as under:

“3.we as a very special case in view of the circumstances cited above direct the respondents to look into the request of the applicant, treating this OA as a supplementary representation/request for allotment of a quarter of the entitled type of the applicant/retention of the present accommodation till such alternative allotment is made, and take a decision on the same through issued of a speaking order on the subject. It is made clear that we have not expressed any opinion on the merits of this case.

4. Till a final decision is taken in the matter through a written order on the subject, the applicant may not be evicted.”

4. Thereafter, the respondents considered the same. However, vide letter dated 27.12.2010 the representation of the applicant for allotment of the quarter was again rejected. The applicant challenged the same vide OA No.4420/2010 which was decided on 22.02.2012 wherein the following orders were passed:

“8. In the aforementioned circumstances, I quash the impugned order dated 27.12.2010 and remit the matter back to respondents to pass an appropriate order in terms of this Tribunal dated 25.10.2010 passed in OA-3490/2010 specifically keeping in view para 2 of the said order.

9. Till such order is passed, respondents would not dispossess the applicant from the govt. accommodation in question. It goes without saying that in case the grievance of applicant still subsists, he would have remedy for redressal of same in accordance with law.”

5. It appears that these orders were considered by the respondents and vide their letter dated 28.03.2013 the quarter allotted to his father was allotted on ad hoc basis to the applicant till such time an alternate accommodation as per eligibility of the applicant gets allotted. This was subject to the condition that the arrears and licence fee shall be recovered from the salary or the retiral benefits of the applicant's father or from the salary of the applicant.

6. In follow up thereof, it is seen from an allotment letter issued on 22.04.2013 that another quarter was allotted to the applicant (Shri Mahender Singh Bisht) for which the acceptance was also communicated by him on 12.06.2013. The applicant had, however, not occupied this other quarter on various pleas. The applicant also pleaded that the allotment of this alternate quarter, said to have been issued on 22.04.2013, was never advised to him and it was only subsequently that he came to know of it and gave acceptance on 12.06.2013, which was deemed late and hence not accepted by the allotting agency and hence he could not occupy the same.

7. Meanwhile, the respondents initiated action against the retired father after the concessional period to retain the quarter was over, and proceedings under Public Properties Eviction Act were initiated on 29.12.2016 wherein orders were passed to vacate the quarter on

03.02.2017. This was challenged in the District Court on 17.02.2017. However, District Court vide their decision dated 21.08.2018 have since dismissed the appeal and thus the quarter allotted to retired father is required to be vacated now under PPE Act.

8. The applicant drew attention to an office memorandum issued by respondents on 25.05.2016 wherein following directions were issued:

“2. The existing allottees would be allowed to retain their residences even though they may become eligible only for a lower type either as result of reclassification or revision of entitlement, till such time they become ineligible otherwise to retain that accommodation. They will not, however, be allowed any change of residence in the same type, if they are staying in a house above their entitlement, after reclassification.”

9. The applicant also brought out that the respondents had issued another notification dated 16.06.2017 wherein following provisions were made:

“50. Allotment of alternate accommodation or regularisation of accommodation in the name of certain persons in retirement cases. –

(1) In the event of retirement of an allottee, the same accommodation may be regularised in the name of the spouse or ward of the retired allottee, if the spouse or ward is entitled for it.

(2) In case, the entitlement of the spouse or ward is a lower type than the accommodation allotted to retired allottee, an alternate entitled type of

accommodation may be regularised in the name of spouse or ward.

(3) In case, the spouse or ward is entitled for higher type of accommodation than the accommodation allotted to the retired allottee, an alternate one type below the entitled accommodation may be allotted to the spouse or ward subject to a maximum of Type V accommodation on payment of normal licence fee and on fulfilment of the following conditions:-

(i) the spouse or ward has been residing continuously for at least three years with the retiring allottee prior to his retirement and has not drawn house rent allowance for this period and in case such spouse or ward is in the service of Central Government for less than three years, then, he has not drawn house rent allowance since the date of his joining the Central Government service,

(ii) The spouse or ward joins the Government service within the permissible period of retention and the accommodation in occupation has not been vacated.”

10. In view of these two notifications (para 7 and 8 supra), the applicant made a representation to the respondents vide his letter dated 19.02.2018 for allotment of the same quarter. This was rejected vide letter dated 20/28.03.2018 which is the grievance in the present OA.

11. The respondents brought out that the present OA tantamounts to misuse of law. It was further mentioned that in the similar case which was adjudicated by the Tribunal in OA No.4136/2016 dated 23.12.2016 directions have been issued that the Tribunal does not have jurisdiction to go into the case which is

already decided under PPE Act. This judgment also relied on the decision given by Hon'ble Supreme Court in the case of **Union of India vs. Rasila Ram and others**, JT 2000 (10) SC 503. The relevant portion of judgment of Hon'ble Supreme Court is as under:

"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 there under, 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 PPE 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."

12. The respondents also brought out certain paras of the judgment in the instant case by the District Court under the PPE Act which brings out the context of present applicant and his grievance:

"9. Further, as mentioned above, Constable M.S.Bisht did not even fulfil the requisite criterion for the period of residence in the said quarter and that criterion was even relaxed by the respondent quarter and that criterion was even relaxed by the respondent in compliance with the order dated 25.10.2010 of the Hon'ble Central Administrative Tribunal. But despite that, Constable M.S.Bisht opted not to avail the opportunity by clearing the pending dues, which rose on the figure of Rs.6,83,561/- by December 2016. Most importantly, the said quarter had been allotted to the appellant Shri Hira Singh, posted as an Inspector whereas his son Shri M.S.Bisht is posted only as a

Constable. Entitlement of the two is not and cannot be same. There cannot be a vested right in a Constable to retain the quarters allotted to his father who was Inspector and stands retired.

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14. Rather, it is a classic case of misuse of process of law where a Constable with impunity claims himself to be entitled to retain the government accommodation allotted to an Inspector, and that too without paying the outstanding damages. It was observed by the Hon'ble Supreme Court of India in the case of S.D.Bandi vs Divisional Traffic Officer, KSRTC, Civil Appeal No.4064/2004 decided on 05.07.2013 by the bench of Hon'ble Mr.Justice P. Sathasivam and Hon'ble Mr. Justice Ranjan Gogoi (copy filed by learned counsel for respondent) as under:

“29. It is unfortunate that the employees, officers, representatives of people and other high dignities continue to say in the residential accommodation provided by the Government of India though they are no longer entitled to such accommodation. Many of such persons continue to occupy residential accommodation commensurate with the offices held by them earlier and which are beyond their present entitlement. The unauthorised occupants must recollect that rights and duties are correlative as the rights of one person entail the duties of another person, similarly the duty of one person entails the rights of another person. Observing this, the unauthorized occupants must appreciate that their act of overstaying in the premises directly infringes the rights of another. No law or directions can entirely control his act of disobedience but for the self realization among the unauthorized occupants.”

15. In view of above discussion, I am unable to find any infirmity in the impugned orders dated 03.02.2017 and 13.02.2017 of the Estate Officer, so both orders are upheld. The present appeal is meritless and the same is dismissed.”

13. In respect of the averment of the applicant that the allotment of alternate accommodation on 22.04.2013 was not advised to the

applicant, the respondents drew attention to Annexure A-3 submitted by the applicant along with the instant OA wherein following was mentioned:

“On 12.06.2013, I have received a telephonic call from Sh. Gupta, Dealing Hand of Type-III quarter, Directorate of Estates that I have been allotted a Type-II quarter on 22.04.2013 and enquiring that why the same flat was not accepted by me. I visited to office of Directorate of Estates next day i.e. 13.06.2013 and it revealed that letter was sent to office address. I got collect the copy of that letter and completed various clearance/formalities from Nirman Bhawan as well as CBI HO. But, Directorate of Estates did not accept my Acceptance Form on the ground that time period of depositing acceptance form has been left.”

It was pleaded that in view of the admission of the applicant that he was advised on 12.06.2013 through a telephonic call, his plea of lack of information cannot be accepted.

14. Matter was heard at length. It comes out from above that the applicant wants allotment of the same quarter in his name which was earlier allotted to his father. One of the relevant conditions for this consideration was that the applicant should not have drawn HRA for three years before retirement and this condition was not fulfilled by the applicant. The relief granted by the respondents in terms of judgments of the Tribunal, (para 3 and 4 supra), wherein applicant was required to pay the balance licence fee, was also not fulfilled by the applicant on one plea or other and thereafter the alternate accommodation was also allotted to him but he has not

made any effort to either find out about this allotment or shift into that. He did not even keep track of status of his application of alternate accommodation which was required of him and instead pleads of information being advised to him belatedly (Para 5 and 12 supra).

15. The above sequence of actions of the applicant cannot be accepted. Further, the plea of the applicant that he was not advised of the allotment in time, is also not acceptable in view of the express provisions in the relevant rules quoted by the applicant himself vide notification dated 16.06.2017 which reads as under:

“15. Acceptance of allotment –

- (1) An offer of allotment of an accommodation shall be accepted by the allottee within eight days from the date of allotment of the accommodation through automated system or by manual system of allotment, as the case may be.
- (2) The allottee may accept the allotment of the accommodation by himself or through an authorised representative before the next bidding cycle.”

16. This provision of necessity and pro-activeness on the part of applicant to keep track of his application had been there even earlier also and is fully applicable in instant case. However, the applicant did not take any action on his part to know of allotment on 22.4.2013 and is now seeking recourse to subsequent instructions issued on 25.05.2016 and 16.06.2017 (para 7 & 8 supra).

17. Further, in regard to retention or allotment of said quarter, the instructions relevant to applicant are those that existed on 30.11.2009, when his father retired and thereafter on 22.4.2013 when the alternate accommodation was allotted to him. Any subsequent instruction or policy quoted by applicant in para 7 and 8 above, are not relevant for the applicant and cannot be relied upon by the applicant.

18. In view of foregoing, the applicant does not have any claim on quarter no.57, Type-III, Sector-1, Sadiq Nagar, New Delhi which was allotted to his father and needs to be vacated now as has already been decided in PPE Act case (Para 11 supra).

19. In view of the foregoing, the present OA has no merit whatsoever and the same is dismissed. No order as to costs.

(Pradeep Kumar)
Member (A)

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