

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

Pronounced on : 15.03.2019

Reserved on : 05.03.2019

OA No. 060/01461/2018

**MAs No. 060/00025/2019, 060/00138/2019 &
060/00269/2019**

**CORAM: HON'BLE MR.SANJEEV KAUSHIK, MEMBER(J)
HON'BLE MRS. P. GOPINATH, MEMBER(A)**

Dr (Mrs.) Vimukti Chauhan w/o Sh. Yudhishtira Singh Chauhan, Age 47 years, working as Scientist-'B' (Toxi), Central Forensic Science Laboratory, Sector 36-A, Chandigarh (Resident of Quarter No. 702/3, Type V, Sector 36-B, Chandigarh).

.....Applicant

BY ADVOCATE: **Sh. D.R. Sharma**

Versus

1. Union of India through its Secretary Ministry of Home Affairs, Directorate of Forensic Science Services, North Block, New Delhi – 110 001.
2. The Director-cum-Chief Forensic Scientist, Directorate of Forensic Science Services, MHA, Government of India, Block No. 9, 8th Floor, CGO Complex, New Delhi – 110 003.
3. The Director-cum-Estate Officer, Central Forensic Science Laboratory, CFLs Complex, Sector 36-A, Chandigarh-160 036.

.....Respondents

BY ADVOCATE: **Sh. Sanjay Goyal**

ORDER

MRS. P. GOPINATH, MEMBER(A):-

1. The applicant is a Scientist 'B' who was entitled for and made a request for allotment of Type IV accommodation. Since no Type IV accommodation was available, the applicant was allotted a Type V accommodation which was lying vacant. This accommodation was allotted with the condition that as and when a person eligible for Type V

quarter makes an application for allotment, the applicant will have to vacate the Type V quarter allotted. One Dr. Ikramul Haque, Deputy Director and Scientist 'D' joined CFSL Chandigarh on 04.09.2018. He applied for a Type V quarter vide application dated 06.09.2018. On receipt of such an application, applicant was asked to submit his willingness to occupy any other available vacant accommodation.

2. Applicant represented that in the event of cancellation of higher than entitlement allotment made to her, she be allotted her entitled Type IV accommodation under General Pool or Ladies Pool. While doing so in October, 2018, she also submitted that it was the mid-academic session of her children studying in class XI and class V. She also quotes some minor health problems for non-vacation of residence.

3. The applicant was informed that no Type IV quarter was vacant and that she would have to occupy the available Type I or Type II accommodation. She was also informed that she is liable to pay three times the flat rate of license fee from the date of possession of Type V quarter i.e. amounting to Rs. 1,10,721. Applicant cites in her favour OA titled **Ajay Kumar Walia & Ors. Vs. CAT, New Delhi, 2003(2) ATJ, 675** wherein it was held that a higher than the entitlement allotment, cannot be cancelled except on grounds like sub-letting, erecting any unauthorized structure, using the residence for any other purpose, tampering of electricity or water connection or any other breach of rules.

4. The prayer of the applicant is for quashing Annexure A-1, order directing her to pay three times the license fee. She also prays that

she be entitled to continue to retain the Type V quarter No. 702/3, Sector 36-B, Chandigarh till she is allotted a Type IV accommodation.

5. The Tribunal by interim order dated 06.12.2018, stayed the dispossession of the Government accommodation.

6. The respondents filed an MA for vacation of the interim order on the ground that the applicant was not entitled for the higher accommodation and they also submitted that the Type V accommodation was allotted to her conditionally, till an entitled official makes an application for allotment to which condition she had willingly agreed to.

7. Heard the counsel for the applicant and respondents and perused the written submissions made.

8. The applicant had applied for a Type IV accommodation under the Ladies Pool in CFSL departmental residential accommodation at Chandigarh. The respondents submit that there is no separate Ladies Pool in the said residential pool accommodation. The respondents deny the applicant's submission that they had asked her to apply for Type V accommodation. They do admit that a Type V quarter was vacant, and the applicant being willing to take it on conditional basis, applied for the same vide application dated 27.11.2013. While the allotment was made, applicant was clearly informed that in case an eligible person applies for the allotted Type V accommodation, then she would have to vacate the same. The respondents also place on record Annexure R-4 application submitted by the applicant wherein she cites Type IV as per first preference and Type II as her second preference.

9. One Dr. Ikramul Haque, who was senior to the applicant, being a Scientist 'D', joined the organization on 04.09.2018. Being eligible for Type V, he applied for the same on 06.09.2018. The said Dr. Haque thereafter issued a reminder seeking allotment of a Type V accommodation. The applicant who was conditionally occupying a Type V accommodation, was requested to submit her willingness for occupying available alternate vacant accommodation and vacate the higher accommodation occupied by her in view of the request made by an entitled officer.

10. The respondents would argue that the applicant was being offered an alternate accommodation, though not necessarily of her entitled type. She stands at waiting list No. 3 for Type IV allotment in the respondent office with date of seniority/priority as 17.09.2001. The respondents also mention that no Type IV accommodation was available at the time she made the request for allotment of Government accommodation. Since entitled persons were occupying Type IV accommodation, the vacation of the same in favour of the applicant would not arise. The applicant who was allotted a higher than entitlement accommodation, was being requested to vacate the same with the proviso that an available vacant accommodation would be allotted to her.

11. The respondents place on record Annexures R-3 and R-6, waiting list dated 01.12.2013 and 17.10.2018 for allotment of residential quarters wherein the applicant is shown at Sr. No. 3 and Sr. No. 6 respectively. The applicant joined the Chandigarh Station on 17.09.2001 and there are two persons above her in the Type IV waiting list dated

01.12.2013 with date of seniority/priority as 12.12.1991 and 18.01.1996, both being senior to her. In Annexure R-6, applicant is at waiting list No. 6 with five senior persons with date of seniority, 1989, 1991, 1994, 1998 and 2001, as against applicant's seniority year 2001. Hence, allotting a Type IV accommodation to the applicant overlooking the claim of persons senior to her would be injustice caused to the persons in the waiting list.

12. Whereas the applicant had enjoyed the stay at higher than entitlement Type V accommodation as long as an entitled person had not made a claim for the same, the right of the applicant to occupy an un-entitled accommodation is contested when an entitled person makes a claim for the accommodation occupied by her, on the ground of entitlement. Whereas the entitled persons occupying the Type IV accommodation could not as per rule formation be evicted in favour of the applicant in order to make an out of turn allotment to the applicant, making an allotment to applicant overlooking the seniority of persons above the applicant in the waiting list would also be unjust. Hence, the alternative offer to the applicant of an available vacant accommodation was the best option available in the circumstances. The applicant has two options before her. The first one was occupying a lower type of accommodation. The second option was to draw entitled HRA and move to a private accommodation. That she was allowed to enjoy higher accommodation for the period 2013-2018 for five years, was a bonus that she enjoyed and she cannot insist for the same when an entitled person makes a claim for his entitled accommodation.

13. Regarding the applicant's contention of a Ladies Pool, on a perusal of the rules, we find that a Ladies Pool is required to be maintained separately for married lady employees and single married employees in the ratio of 2 : 1 between married and single lady employees. But, the rules do not cite nor did the applicant bring to notice what is the percentage to be designated for the Ladies Pool.

14. We also note that the applicant had opted for both Type IV & V accommodation in her application for accommodation. Since Type IV was not available, the applicant was allotted Type V accommodation. Hence the allotment of a higher Type V accommodation was a choice exercised by the applicant, fully aware of the fact and consequences of vacation, if an entitled person makes a claim. Whereas the allotment of an official accommodation is a facility given to a Government servant, in the absence of availability of an entitled type, the applicant cannot demand that she be allowed to continue in an higher accommodation, as this would impinge into the right of another person who as per entitlement is entitled to be allotted the accommodation that she is occupying.

15. This is not a case where the applicant has not been given an alternate accommodation, though it can be said that the alternate accommodation given to her is not of her entitlement. This however does not devolve into a right to occupy the un-entitled accommodation, for which another entitled officer has applied. However, the applicant has the second choice of drawing HRA. From Annexures R-3 and R-6 Waiting List placed on record by the respondent, there is no doubt that the availability of Government accommodation is much lower than the

demand and there are persons senior to the applicant in the waiting list for fresh allotment of residential quarters as cited above. Since such documents remain in public domain, applicant is aware of her position in the waiting list as also the details of persons senior to her who have already been allotted the Type IV accommodation or awaiting allotment. The applicant does not have a case that anybody junior to her has been allotted a type IV accommodation who could be vacated to enable occupation of the same by the applicant. The applicant was fortunate that at the time she applied, a higher type of accommodation, i.e. Type V was available.

16. Whereas we would like to direct the respondents to give the applicant a Type IV accommodation, we are restrained on account of the fact that the available Type IV accommodation are already occupied by entitled persons and there are also two persons in Type IV waiting list, who are senior to the applicant, waiting for an allotment of Type IV accommodation. We, therefore, direct that the applicant exercise one of the two options available to her within 15 days, i.e. move to a lower accommodation or apply for HRA as permissible under the Rules.

17. Regarding the second prayer of the applicant being charged three times the license fee, the applicant has placed on record Annexure A-11 which states that if a Government servant is offered a Government accommodation of higher type than entitlement, due to availability of surplus/vacant quarters, only flat rate of license fee relating to that type of accommodation be charged. Hence, we quash Annexure A-1 charging three times the license fee from the applicant as it is in violation of this

OM dated 21.04.2003. We allow the applicant to occupy the present accommodation upto 31.03.2019 on the grounds of the academic year of her children and direct her to vacate it on 01.04.2019.

18. This OA stands disposed of with the above directions. MAs, pending if any, are also disposed of accordingly.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated:
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