

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00033/2018

Jabalpur, this Tuesday, the 26th day of February, 2019

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

1. Mrs. Jibina Varghese,
Aged about 33 years,
Wife of Mr. Cezil Varghese, W/a Staff Nurse,
R/o G-II Type-I, Flat No.1013,
AIIMS Residential Complex
Bhopal (MP) PIN 462024 Mob. 7049506396
2. Mrs. Saumya Jaice,
Aged about 34 years,
Wife of Mr. Jaice Kurian, W/a Staff Nurse,
R/o G-II Type-I Flat No.1011
AIIMS Residential Complex
Bhopal (MP) PIN 462024 Mob.7693999847 -**Applicants**

(By Advocate –**Shri Praveen Dubey**)

V e r s u s

1. The All India Institute of Medical Sciences
through its Director Saket Nagar,
Bhopal Madhya Pradesh 462024
2. The Deputy Director (Admin)
All India Institute of Medical Sciences
Saket Nagar Bhopal
Madhya Pradesh 462024 - **Respondents**

(By Advocate –**Shri N.K. Mishra**)
(Date of reserving the order:-17.09.2018)

ORDER

By Navin Tandon, AM:-

The applicants are aggrieved that they are being asked by the respondents to vacate the quarters occupied by them.

2. The applicants have made the following submissions:-

2.1 They are working as Staff Nurse through outsourcing agency with All India Institute of Medical Sciences (AIIMS) Bhopal since 2013.

2.2 They were allotted Type I, Flat No.1013 and 1011 respectively in AIIMS Residential Complex in the month of July 2013. However, no allotment orders were issued.

2.3 Normal rent was being directly deducted from the salary of the applicants.

2.4 Respondents issued orders dated 14.05.2016 (Annexure A/3), wherein it was indicated that in Residential Complex of AIIMS, Bhopal will be charged Rs.8483/- p.m. for Type I quarter, which will be deducted from the bill presented by outsourcing agency.

2.5 Another office order dated 05.07.2016 (Annexure A/4) was issued by the respondents asking the outsourced employees to vacate the quarters on or before 15.07.2016, failing which penal rent w.e.f. May 2016 as per orders dated 14.05.2016 will be recovered.

2.6 Since applicant No.2 was pregnant at the relevant time, she requested the respondents some more time through application dated 23.09.2016 (Annexure A/13). She was permitted to retain quarter 1011 till October end on humanitarian grounds by notings on the application itself.

2.7 A deduction of Rs.59381/- each has been made from the salary of both the applicants under the head “Penal Rent” (Annexure A/16).

2.8 It has been alleged in Para 4.7 of the O.A. that while applicants are being asked to vacate the quarters and charged penal rent, similarly situated employees (five examples given) are being allotted and allowed official accommodation.

2.9 On being asked about the deduction of penal rent, the outsourcing agency informed through e-mail (Annexure A/17) that it is on the basis of instructions of respondents.

2.10. The applicants were served with orders individually dated 16.02.2017 (Annexure A/1 and A/2 respectively) to vacate the quarter immediately, failing which respondents shall be constrained to take action for eviction of the said quarters.

2.11 The applicants had earlier approached Hon'ble High Court of Madhya Pradesh in Writ Petition No.4445 of 2017, wherein the parties were directed on 04.04.2017 (Annexure A/18) to maintain status quo. Subsequently, since AIIMS was transferred to the jurisdiction of this Tribunal, they withdraw the petition with liberty to approach this Tribunal (Annexure A/19).

3. The applicant has prayed for the following reliefs:-

“8. Relief Sought for:-

It is therefore respectively prayed that, in view of facts & grounds submitted hereinabove this Hon'ble Tribunal may be pleased:

8.1 To quash, the Impugned Notice cum Order dated 16.02.2017 (Ann. A/1 & A/2), passed by Respondent No.2;

8.2 To quash, the Impugned orders dated 14.05.2016 (Ann. A/3) & 5.7.2016 (Ann. A/4), both passed by Respondent No.2, so far as it, relates to imposition of penal rent & eviction, against applicants;

8.3 To issue a direction, to the Respondents to consider & allow Applicants to occupy the Government Accommodation/quarters owned by them, at par with other employees, working under it, on normal admissible rent;

8.4 To call for the relevant records, for kind perusal of this Hon'ble Tribunal;

8.5 Any other reliefs deemed fit on facts and circumstances of the instant case."

4. The respondents have submitted as under:-

4.1 The applicants are not the regular employees of AIIMS. They have been engaged through an outsourced agency.

4.2 Since there is no employees/employer relationship, the occupation of quarters can be termed as encroachment.

4.3 The applicants were provided accommodation in the residential complex in 2013 purely on temporary basis as a

stop gap arrangement and it was not regular allotment of quarter to the applicants.

4.4 The quarters of AIIMS Bhopal are Public Properties under Section 2(e) of the Public Properties (Eviction of Unauthorised Occupants) Act, 1971 (PP Act, for brevity).

4.5 It is required to give quarters to regular employees, who are to render 24x7 services. Due to encroachment by the applicants, the respondents are unable to allot the quarters to Doctors and regular staff.

4.6 The applicant No.2 was shown leniency as she was pregnant. But that time period has also elapsed.

5. The applicants have filed their rejoinder, wherein they have reiterated that the respondents are adopting pick and choose policy amongst similarly placed employees. They have submitted a list of employees who are continuing to be adjusted by the respondents (Annexure RJ/1). This list has at least 4 names of outsourced employees.

6. The respondents in their additional reply have refuted the list of Annexure RJ/1 and have submitted their own list, certifying that all are contractual employees and none of them are outsourced employees.

7. Heard the arguments from learned counsels of both the parties and pleadings available on record.

8. There is no doubt that the quarters in the residential complex of AIIMS are Public Property. The first right to their allotment goes to regular employees.

9. However, it is true that the applicants have been staying in these quarters with the approval of the residents. Hence, it would be wrong to term them as encroachers.

10. Respondents have not given explicit reply to Para 4.7 of the O.A. Further, they have denied that the list in Annexure RJ/1 is correct, but have failed to provide the correct picture themselves.

11. The respondents may be within their rights to not allot any quarters to outsourced employees. However, they cannot pick and choose as per their whims regarding

continuation /eviction of outsourced employees from the quarters.

12. Since the quarters are the property of AIIMS, it goes without saying that they may fix penal rent of the quarters for unauthorized occupation. The applicants are also providing service at AIIMS and they were allowed to stay in the quarters by the competent authorities. Hence, it would not be providing justice to them if any whimsical penal rent is charged to outsourced employees.

13. Accordingly, we direct the respondents to take following steps:-

13.1 Fix up the penal rent as per Government rules on the subject. The penal rent charged to the outsourced employees should be the same as to be charged to a regular employee for unauthorized occupation.

13.2 Draw out a policy guidelines regarding getting the quarters vacated from outsourced employees and implement the same, so that there is no favoritism.

13.3 Since interim relief was granted by Hon'ble High Court and subsequently by this Tribunal, the applicants may be charged only normal rent till date of pronouncement of this order.

13.4 Further continuation/eviction of applicants may be decided by respondents as directed above.

14. The O.A. is disposed of as above. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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