

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH:
NEW DELHI**

O.A. NO.626 of 2017

Orders reserved on : 25.07.2019

Orders pronounced on : 31.07.2019

Hon'ble Ms. Nita Chowdhury, Member (A)

Ms. Anjana Talwar, Aged about 58 years
D/o Late Shri B.D. Talwar,
R/o T-13/2, Sadar Bazar, Delhi Cantt-10
and working as Officer Supdt. (Group C post) in O/o the
Commandant, COD, Delhi Cantt-10.

....Applicant

(By Advocate : Shri S.S. Tiwari)

VERSUS

1. Union of India,
Through it's Secretary,
Ministry of Defence,
South Block, New Delhi.
2. Station Commander,
Station Headquarters,
Delhi Cantt-10.
3. SSO (C)
Station Headquarters,
Delhi Cantt-10.

.....Respondents

(By Advocate : Shri M.S. Reen)

ORDER

By filing this OA under Section 19 of the Administrative
Tribunals Act, 1985, the applicant is seeking the following
reliefs:-

- “(a) To set aside and quash the impugned order
dt.06/02/17 received by the applicant on
14/02/17

- (b) To direct the respondents to restore the allotment of Govt. accommodation No: T-13/2, Sadar Bazar, Delhi Cantt.
- (c) to pass any other order/s as may be deemed just fit and proper in the fact and circumstances of the case.
- (d) Award cost.”

2. The factual matrix of the case is that the applicant joined service as LDC in the COD w.e.f. 14.12.1984. Subsequently, she was promoted as U.D.C. w.e.f. 1.5.2005 and as Office Supdt. w.e.f. 1.4.2016.

2.1 The applicant was living with her mother but after the demise of her mother on 19.9.2015, she being alone and unmarried, and for social security, decided to shift to her elder brother's Govt. accommodation (T-13/2, Sadar Bazar, Delhi Cantt-10). Her brother applied for sharing permission vide representation dated 16.12.2015 through proper channel which was forwarded to respondent no.2 vide letter dated 16.12.2015 (Annexure A-2). When the permission was granted by respondent no.2 vide letter dated 23.3.2016 (Annexure A-3), the applicant shifted to her brother's Govt. accommodation and in terms of the aforesaid letter dated 23.2.2016, the applicant was not claiming HRA from the respondents.

2.2 Subsequently, vide letter dated 1.9.2016 through proper channel, the applicant requested the respondent no.3 to

transfer the allotment of the Govt. accommodation, which was allotted to her brother, in her favour as her brother was vacating the same. The said letter was forwarded by applicant's office vide letter dated 2.9.2016 (Annexure A-4 (Colly.) Thereafter the said accommodation was allotted in favour of the applicant by the respondents vide letter dated 10.9.2016 (Annexure A-5) and vide letter dated 12.9.2016 (Annexure A-6), applicant's brother was permitted to vacate the Govt. accommodation within two days from the date of issue of the said letter.

2.3 Applicant further submitted that earlier officers, who were working on the post of respondent no.2 and no.3 had also been allotted the said Govt. accommodation as to the applicant in terms of SRO 308/78. However, the new officers, who have now joined the posts of respondent no.2 and no.3 have cancelled the said Govt. vide Order dated 6.2.2017 (Annexure A-1) in the garb of policy constraints and the applicant was directed to vacate the said Govt. accommodation.

2.4 Aggrieved by the aforesaid cancellation of allotment of the said Govt. accommodation, the applicant has filed this OA seeking the reliefs as quoted above.

3. Counsel for the applicant submitted that the impugned order of cancellation of allotment of the said Govt.

accommodation was issued by the respondents without any show cause notice and as such the action of the respondents is arbitrary and unconstitutional. He further submitted that there had been no misrepresentation on the part of the applicant.

3.1 Counsel further submitted that even though the applicant was allotted the said Govt. accommodation as per SRO 308/78 by the respondents, however the impugned action is nothing else but an insensitive and colorable exercise of power on the part of the respondents. In support of the aforesaid contention, counsel placed reliance on the decision of the Apex Court in the case of **Commissioner of Police, Bombay and Gordhandas Bhanji**, AIR 1952 SC 16, in which following observations had been made:-

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant or of what was in his mind, or what he intended to do. As such orders are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed' they must be construed objectively with reference to the language used in the order itself.”

He further submitted that the respondents are bound by the principles of promissory estoppel as the applicant was allotted the said Govt. accommodation by the statutory authority, i.e., respondent no.2, the same has been acted upon and now

they are barred by principles of promissory estoppels. He also submitted that based upon the said allotment order dated 10.9.2016, all the concerned persons have acted upon the same and now the situation has changed so it cannot be reversed.

3.2 Lastly counsel further submitted that no reasons have been disclosed in the impugned order for arbitrarily cancelling the said Govt. accommodation.

4. On the other hand, counsel for the respondents by referring to the counter affidavit submitted show that during the pendency of this OA, the respondents have issued a show cause notice dated 5.3.2017, which was served upon the applicant and transferred the matter to EO case vide letter dated 19.4.2017.

4.1 Counsel further submitted that the allotment of the said Govt. accommodation was made erroneously, hence, the same was cancelled vide letter dated 6.2.2017 (Annexure A-1) when the error was noticed while investigating a complaint against the applicant for unauthorized transfer of Govt. accommodation and as per rules, she is not entitled for transfer the said Govt. accommodation.

4.2 Counsel also submitted that as per SRO (1) 308/78, an accommodation can only be transferred to employee's son, daughter, wife, husband and father but the applicant

happens to be sister of the retiring employee. As such the applicant is not entitled for transfer of the said Govt. accommodation. He further submitted that judgment relied upon by the applicant is not applicable in the present case as the facts and circumstances in the said relied upon judgment are entirely different from the present case.

4.3 Counsel lastly submitted that the said allotment of the Govt. accommodation was erroneously made and as such the same was cancelled vide order dated 6.2.2017 when error was noticed during investigating a complaint against the applicant for unauthorized transfer of the said accommodation and a show cause notice dated 5.3.2017 was also served upon the applicant but the same has not yet been responded to by the applicant till date.

5. Heard learned counsel for the parties and carefully perused the pleading available on record.

6. It is an admitted position that applicant was permitted upon a request made by her brother to share the said Govt. accommodation allotted to her brother by the respondents (Annexure A3). It is also an admitted position that applicant made an application for transfer of said Govt. accommodation in her favour due to the fact that her brother was going to retire, which request was acceded to (Annexure A5) and the said Govt. accommodation was transferred by the

respondents themselves vide order dated 10.9.2016 (Annexure A6) in terms of SRO 308/78 and also there is no dispute that the applicant was not claiming HRA from 23.2.2016 when the request made by her brother to permit her sister (applicant) to share the said Govt. accommodation was acceded to by the respondents. The said sharing permission was accorded by the respondents having regard to the peculiar conditions of the applicant being alone and unmarried as her mother had expired on 19.9.2015. The applicant's date of birth is 18.8.1959 and at the time when permission for sharing the said Govt. accommodation was accorded by the respondents, i.e., on 23.2.2016, the applicant was of 56 years old. It is further admitted position that her brother was going to retire and therefore, he was required to vacate the said accommodation and in such peculiar circumstances, the applicant was left with no option except to make a request for transfer of the said Govt. accommodation in her favour, as she was also going to retire after few years, which request was also acceded to by the respondents vide order dated 10.9.2016 and her brother was permitted to vacate the said Govt. accommodation within two days from the date of issue of the order dated 12.9.2016. However, vide order dated 6.2.2017, the respondents have cancelled the said accommodation vide order dated 14.2.2017 with prior issuance of the show cause notice to the applicant. As the

respondents have themselves admitted that they have issued show cause notice only on 3.5.2017, i.e., much after issuance of cancellation of the allotment of the said Govt. accommodation, the said impugned order is liable to be quashed on this ground alone as the respondents have clearly violated the principles of natural justice.

7. Further it is observed that the stand of the respondents in this case is that as per the SRO 308/78, the transfer of allotment of Govt. accommodation can only be made to employee's son, daughter, wife, husband or father, but the applicant being a sister of the allottee of the Govt. accommodation, she is not entitled for transfer of the said Govt. accommodation. First of all, it is relevant to mention that while transferring the said Govt. accommodation, erstwhile respondent no.2 and No.3 have resorted to the terms and condition of the provisions of SRO 308/78. The relevant provisions of the said SRO reads as under:-

“20. Allotment to certain relations in certain cases – (1) When a Government Servant who has been allotted Government accommodation retired from services or dies while in service his son, daughter, wife, husband or father be allotted Government accommodation on an ad-hoc basis provided that the said relation is Government servant eligible for Government accommodation and has been sharing accommodation with the retiring or deceased officer for at least six months before the date of retirement or death.

(2) These same residence may be regularized in the name of the relation if he or she is eligible for a residence of that type or a higher type. In other cases

the said relation may be allotted a residence of his or her entitled type if available at the time or failing that a type next below. If acceptable to the allottee.”

From a perusal of the pleadings, it is clear that the applicant being a sister of the allottee of the Govt. accommodation applied for allotment of the same and the erstwhile respondent no.2 and no.3 having regard to the peculiar situation of the applicant might have relaxed the said relation condition, as the applicant was fulfilling all the other conditions relevant for according approval for transferring the Govt. accommodation to her. The fact that applicant was fulfilling all other eligibility conditions as enumerated in SRO 308/78 is not disputed by the respondents in this case. The respondents' only contention is confined to the relation of the applicant with the allottee of the said Govt. accommodation, which can be deemed to have been relaxed by the erstwhile respondent no.2 and No.3 in view of the peculiar facts of this case. Rightly or wrongly, once the respondents have admitted that erstwhile respondent no.2 and 3 had granted permission for transfer of the said Govt. accommodation in favour of the applicant despite being fully aware of the rule position on the subject, the impugned order passed by the respondent cancelling the said allotment vide order dated 6.2.2017 without issuing a prior notice of show cause is not sustainable in the eyes of law.

8. This Tribunal vide Order dated 20.2.2017 in this case at the admission stage itself, stayed the operation of the impugned order and the interim order is continuing till date. The applicant's date of birth is 18.8.1959 and she is going to retire on 31.8.2019. As such in the peculiar facts and circumstances of this case, and for the reasons stated above, we allow this OA and accordingly, the impugned order dated 6.2.2017 is quashed and set aside. The respondents are further directed that applicant be allowed to retain the said Govt. accommodation being T-13/2, Sadar Bazar, Delhi Cantt-10 till her retirement on 31.8.2019

9. However, it is made clear that this case may not be treated as a precedent as this Tribunal has passed orders in the peculiar facts and circumstances of the case and the fact that interim relief was granted and is continuing till the date of final hearing and the fact that the applicant is retiring on 31.8.2019. The respondents cannot be permitted to evict the applicant of this OA at this time when her retirement is imminent. There shall be no order as to costs.

(Nita Chowdhury)
Member (A)

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