
(2010) 01 DEL CK 0221

In the Delhi High Court

Case No : Writ Petition (C) 9639 of 2009 and C.M. 7696 of 2009

Mukesh Kumar Gupta

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 25-01-2010

Acts Referred:

Citation : (2010) 167 DLT 402

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : C. Hari Shankar Pushkar Kr. Singh and Jagdish N, for the Appellant;
R.V. Sinha, Central Govt. Counsel and A.S. Singh, for the Respondent

Final Decision : Allowed

Judgement

S. Muralidhar, J.—This petition depicts the sad plight of a person who has been appointed as the Judicial Member of the Central Administrative Tribunal (CAT), and has, till date, not been allotted an official accommodation at the place of his posting. It is a matter of concern that despite amendment to the Administrative Tribunals Act, 1985 (Act) in 2006 by insertion of Section 8A(3) bringing the Judicial Members of the CAT at par with the High Court Judges, nothing has been done by the Respondent, Union of India to provide an official accommodation to the Petitioner at the place of his posting.

2. The Petitioner was appointed as Judicial Member of the CAT on 27th August 2002 and was posted to the Bangalore Bench. He was subsequently transferred to the Principal Bench of the CAT and allotted quarters at C-II/48, Block, Tilak Lane, New Delhi by an order dated 2nd February 2006. The Petitioner and his family occupied the above premises in April 2006. The Petitioner's initial appointment was for a period of five years and therefore came to an end on 27th August 2007.

3. In accordance with S.R. 317-B-11(2) which dealt with Allotment of Government Residences (General Pool in Delhi) Rules, 1963, the Petitioner was

permitted to retain the accommodation for some time (also known as concessional period?). He was issued a notice on 13th November 2007 by the Directorate of Estates, New Delhi (Respondent No. 2) stating that his allotment stood cancelled with effect from 28th December 2007 and that if the Petitioner desired to retain the quarters beyond the prescribed concessional period, he would be allowed to do so on payment of licence fee as per the rules, after submitting proof of payment of the current electricity, water and piped gas bills.

4. The Petitioner points out that the above communication did not account for the amendment made in 2006 to the Act whereby Section 8(3) was amended to provide that "the conditions of service of Chairman and Members shall be the same as applicable to Judges of the High Court". That amendment came into effect on 19th February 2007 even while the Petitioner was a Member of the CAT. It is submitted that the terms and conditions of service of the Judges of the High Court is governed by the High Court Judges (Conditions of Service) Act, 1954 ("the High Court Judges Act"). Section 22A(1) of the High Court Judges Act provides that every Judge shall be entitled "without payment of rent to the use of an official residence in accordance with such rules as may, from time to time, be made in this behalf". Rule 2-A of the High Court Judges Rules, 1956 (the High Court Judges Rules) issued in terms of Sections 23 and 24 of the High Court Judges Act provides as under:

2-A. Residence of Judges.

Each Judge who avails himself of the use of an official residence, shall be entitled without payment of rent to the use of a furnished residence throughout his term of office and for a period of one month immediately thereafter, and no charges shall fall on the Judge personally in respect of the maintenance of such residence. This concession shall also be admissible to the members of the family of a Judge, who dies while in service, for a period of one month immediately after his death.

Explanation.--For the purposes of this rule and Rules 18 and 2-C, (a) "Official residence" means an accommodation owned, or taken on hire by requisition or otherwise, by Government and allotted to a Judge free of rent; (b) "maintenance" in relation to an official residence, includes the payment of local rates and taxes.

5. It is submitted that in light of the above clear position, the Respondent No. 2 could not have issued the communication dated 13th November 2007. Nevertheless, the Respondent No. 2, by its letter dated 12th December 2007, permitted the Petitioner to retain the premises at C-II/48, Tilak Lane till 28th April 2008.

6. By an order dated 8th April 2008, the Petitioner was again appointed as Judicial Member of the CAT and was posted to the Principal Bench of the CAT. The said order reads as under:

No. A-11013/15/2007-AT

Government of India

Ministry of Personnel, Public Grievances and Pensions

Department of Personnel and Training

North Block, New Delhi

The 8th April, 2008.

1. The President is pleased to appoint Shri Mukesh Kumar Gupta as Judicial Member in the Central Administrative Tribunal. On appointment as Judicial Member, Shri Mukesh Kumar Gupta is posted to Principal Bench of the Tribunal.

2. The tenure of appointment of Shri Mukesh Kumar Gupta as Judicial Member in the Central Administrative Tribunal will be for a period of five years from the date of assumption of the charge of the post or till the age of 65 years, whichever is earlier.

3. The conditions of service of Shri Mukesh Kumar Gupta as Judicial Member in the Central Administrative Tribunal shall be governed by the provisions of the Administrative Tribunal Act, 1985 as amended by the Administrative Tribunals (Amendment) Act, 2006.

4. The appointment of Shri Mukesh Kumar Gupta as Judicial Member in the Central Administrative Tribunal is subject to the outcome of the Writ Petition No. 261/2007 pending in the Supreme Court.

(emphasis supplied)

7. It is noticeable that the above order in para 3 makes it abundantly clear that the conditions of the service of the Petitioner were to be governed by the Act as amended in 2006.

8. By a letter dated 28th April 2008, the Respondent No. 1 informed the Petitioner that the allotment of flat at C-II/48, Tilak Lane, New Delhi in his name would be regularised with effect from the forenoon of 9th April 2008. On 15th May 2008, the Petitioner was transferred by an Office Order to the Jabalpur Bench of the CAT in place of another Judicial Member of that Bench who was transferred to the Principal Bench.

9. Pursuant to the aforementioned order, the Petitioner joined the Jabalpur Bench on 19th May 2008. The Petitioner then wrote to the Respondent No. 2 on 1st July 2008 seeking permission to retain the accommodation at Tilak Lane, New Delhi till 31st March 2009 "particularly, in view of the fact that my daughter Ku. Uma Gupta is a student of 5th class, Meter Dei School, Tilak Lane, New Delhi and it being the middle of academic session". It may be mentioned that the Petitioner was not, till that time, allotted any official accommodation at Jabalpur.

10. By a letter dated 5th September 2008 the Respondent No. 2 informed the Petitioner that he would be allowed to retain the accommodation at Tilak Lane only up to 4th June 2008 and that the possession of the accommodation thereafter would be treated as an unauthorised as per the government rules.

11. By his letter dated 21st October 2008, the Petitioner wrote to the Secretary, Ministry of Urban Development (Respondent No. 1 herein) pointing out that he was required to be treated on par with the Judge of a High Court for the purposes of the terms and conditions of service including his official residence. He pointed out that the assertion by the Respondent No. 2, in its letter dated 5th September 2008, that he had already availed of the benefit of the retention of seven months eleven days after having demitted the office of Member (CAT) on 27th August 2007 was "not legally valid, tenable and misconceived". He pointed out that, on transfer, he was entitled to retain the government accommodation for a period of eight months as per rule SR 317-B(II). The Petitioner also pointed out that the Central Government was legally bound to provide accommodation to him and his family either at Delhi or at the place of his posting. He had not yet been offered any government accommodation at Jabalpur. He had also not claimed any House Rent Allowance (HRA). In the circumstances, he sought permission to retain the accommodation at Tilak Lane till 31st March 2009.

12. Thereafter, on 5th December 2008 the Respondent No. 2 virtually repeated the same order dated 5th September 2008 with no change even in the wording. This was followed by a notice dated 5th January 2009 issued by the Estate Officer u/s 4(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 ("PP Act"), informing the Petitioner that the case had been fixed for 30th January 2009.

13. In the above circumstances, the Petitioner filed Writ Petition (Civil) No. 517 of 2009 in this Court seeking the quashing of the communication dated 5th December 2008 and all proceedings consequent thereto. It was further prayed that the Respondents should be directed to allot the Petitioner an official accommodation as per his entitlement at Jabalpur or permit him to retain the premises at Delhi.

14. On 29th January 2009 while directing notice in the petition, a learned Single Judge of this Court stayed the proceedings before the Estate Officer.

15. The stand taken in the counter affidavit filed by the Respondents was that once the retention period was over, no further extension could be granted beyond the permissible limit of eight months. It was contended that "the allotment of government accommodation in Jabalpur or otherwise has no relevance with the allotted accommodation in Delhi".

16. On 22nd April 2009 the following order was passed by this Court in W.P.(C) No. 517 of 2009:

Pleadings in the writ petition are complete.

At the outset, counsel for the petitioner states that he seeks to confine the relief in the present writ petition to prayer (i) where under, the petitioner has sought directions to the respondent/UOI to allot an official accommodation to the petitioner, as per his entitlement, as a Member of the Central Administrative Tribunal, Jabalpur. He submits that the petitioner was compelled to approach this Court in view of a letter dated 5.12.2008 issued by the respondent No. 2 to the petitioner, calling upon him to pay damages as per the Rules, on the ground that he is in unauthorized possession of a government accommodation. Counsel for the petitioner submits that that when the present writ petition was instituted on 27.1.2009, the petitioner was hopeful that by 31.3.2009, he would be offered official accommodation by the respondent No. 1, as per his entitlement, at Jabalpur. However, till date, the respondent/UOI has not taken any steps in that regard. He further states that as a result, the family of the petitioner continues to occupy the official accommodation at Flat No. C-II/48, Tilak Lane, New Delhi not having any other official accommodation to shift to.

Having regard to the fact that the main grievance of the petitioner in the present writ petition, is the inaction on the part of the respondent/UOI to allot an official accommodation to the petitioner, as per his entitlement, as a Member of the Central Administrative Tribunal, Jabalpur, the present writ petition and the application are disposed of with the consent of the counsels for the parties, with liberty granted to the petitioner to make a representation to the respondent/UOI within a period of two weeks, which shall be considered by the respondent/UOI and disposed of in accordance with the applicable rules, within two weeks thereafter, by passing a speaking order, under written intimation to the petitioner.

In case the petitioner is aggrieved by the order passed by the respondent/UOI, he shall be entitled to seek his remedies as may be available to him, in law. It is however clarified that the respondent No. 1 shall not take any coercive steps against the petitioner for a period of two weeks from the date the respondent/UOI conveys the speaking order to the petitioner.

17. Pursuant to the aforementioned order, the Petitioner made a detailed representation on 29th April 2009 again pointing out that he should be granted official accommodation at the place of his posting and till such time his family should be permitted to retain the premises at Tilak Lane. This representation was rejected by an order dated 26th May 2009 issued by the Respondent No. 2. It was stated that the Respondent No. 2 did not have any accommodation at Jabalpur, and therefore, was not in a position to provide government accommodation there. It was pointed out that the Petitioner would be entitled to HRA as per applicable rules. However, the Petitioner could not retain the accommodation at Delhi while working at Jabalpur, beyond the maximum possible retention period of eight months which he had already availed of. It was consequently stated that he should vacate the premises at Tilak Lane immediately "to avoid accumulation of damages for overstay beyond 4.6.2008, as provided under the Rules". The Petitioner has, therefore, again approached

this Court for relief.

18. In the meanwhile, on 20th May 2009 the Estate Officer issued another notice to the Petitioner under the PP Act fixing the date as 27th May 2009.

19. By an order dated 17th June 2009 this Court while issuing notice to the Respondents in the present petition, stayed the dispossession of the Petitioner. The said interim order has continued till date.

20. Mr. C. Hari Shankar, the learned Counsel for the Petitioner and Mr. R.V. Sinha, the learned Counsel for the Respondents have been heard.

21. It appears to this Court that the Respondents are not justified in treating the Petitioner in the manner they have. The Respondents have refused to acknowledge that the position of the Petitioner, in the matter of his terms and conditions of service, is no different than a High Court Judge. Rule 2-A of the High Court Judges Rules makes it clear that an official residence means "an accommodation owned, or taken on hire by requisition or otherwise, by Government and allotted to a Judge free of rent". There can be no manner of doubt that by virtue of the amendment in 2006 to the Act in Section 8(3), the conditions of service of the Members of the CAT is on par with that of Judges of the High Court. Section 22-A of the High Court Judges Act states that every Judge shall be entitled "without payment of rent" to the use of an official residence.

22. The Petitioner has since then again been transferred to the Gauhati Bench of the CAT. Even in Gauhati the Petitioner had not been allotted any official residence as yet. What is worse, the Petitioner has not been paid any HRA either. Counsel for the Respondents had no valid explanation to offer for the above treatment of the Petitioner. His refrain was that the Petitioner was in illegal occupation of the premises at Delhi and till he vacated those premises, he would not be allotted any other official accommodation.

23. This Court is dismayed at the utter callousness with which the Respondent has approached the present issue. The Members of the CAT are entitled to official accommodation on par with the Judges of the High Court. It is, therefore, the duty and the obligation of the Central Government to ensure that every Member of the CAT is provided official accommodation at the place of posting. If for some reason an official accommodation is not available immediately, then till such time the Central Government is bound to either take on hire or requisition an accommodation to be allotted to the Member. There cannot be a situation where a Member of the CAT is left to fend for himself or herself at the transferred place of posting.

24. One can easily imagine the predicament in which the Member of a CAT is placed when at the place of transfer where the Member joins, official accommodation is not provided for months on end. The task of being a Member, CAT is itself not an easy one. Unless the basic facilities are afforded to the

Members of the CAT, one cannot expect them to give of their best. Ensuring a calm and undisturbed atmosphere for a judicial officer is essential for effective functioning of such officer. An official accommodation is, therefore, essential for the functioning of the Member.

25. The very object and purpose of the Parliament amending the Act in 2006 to equate the conditions of service of Members of the CAT with that of the High Court Judges, would be defeated if the Government is not able to provide an official accommodation to such Members at the place of their posting.

26. The Petitioner herein has been repeatedly requesting the Central Government to either allot him an official accommodation or in terms of the rules applicable to High Court Judges which perforce apply to the Members of the CAT as well, to take on hire or requisition the same accommodation. This was not done during the Petitioner's posting in Jabalpur. This has again not been done thus far after the Petitioner has been transferred to Gauhati. This is indeed a deplorable state of affairs.

27. In the above background, it is unreasonable for the Government to insist that the Petitioner should give up the accommodation at New Delhi first for being allotted other official residence. This rigid insistence by the Respondents upon one part of the rule, while willfully not complying with the obligation under another set of rules, is indeed sad. It is not open to the Government, while refusing to act in accordance with Rule 2-A of the High Court Judges Rules, (which are applicable to the Judicial Members of the CAT) to insist that such Member should first comply with S.R. 317-B-11 which talks of the retention period.

28. Consequently, this Court has no hesitation in quashing the impugned decision dated 26th May 2009 of the Respondent No. 2, Directorate of Estates and also quashing the proceedings under the PP Act initiated against the Petitioner in regard to the accommodation at CII/48, Tilak Lane.

29. A mandamus is issued to the Union of India to forthwith take on hire or requisition an official accommodation for the Petitioner at Gauhati. This should be done within a period of eight weeks from today. The Petitioner will be consulted before such premises is taken on hire or on requisition in order to enable the Petitioner to be satisfied that it is in accordance with his entitlement and will suit his requirements. For a period of eight weeks after the Petitioner is put in possession of the official accommodation at Gauhati, the Petitioner's family's possession of the accommodation at C-II/48, Tilak Lane will not be disturbed. This is to enable them to make alternate arrangements either to join the Petitioner at the place of his posting or to find some other suitable accommodation in New Delhi.

30. The petition is accordingly allowed with costs of Rs. 10,000/- which will be paid to the Petitioner by the Respondents within a period of four weeks from today.