

(2021) 05 CAT CK 0015

In the Central Administrative Tribunal

Case No : Original Application No. 1471 Of 2020

Pawan Kumar

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 21-05-2021

Acts Referred:

Allotment Of Residences (Defence Pool Accommodation For Civilians In Defence Services) Rules, 1978 — Rule 2(n), 8

Citation : (2021) 05 CAT CK 0015

Hon'ble Judges : Aradhana Johri Member (A)

Bench : Single Bench

Advocate : Yogesh Sharma, Satish Kumar

Final Decision : Dismissed

Judgement

“

Aradhana Johri, Member (A)",,,

1. The applicant, Assistant Engineer (E/M) in Military Engineering Service, was posted in Air Force Station, Palam in May, 2013. He was allotted",,,

Accommodation No.P-80/1, Type-III, MES Pool, Palam, New Delhi vide order dated 16.04.2014. He was posted to various offices in New Delhi and",,,

finally to the office of Engineer-in-Chief (MES), New Delhi. He was given a Show Cause Notice dated 24.08.2020 which was re-sent on the request",,,

of the applicant, on 05.10.2020. A final notice for unauthorized occupation was also issued on 17.09.2020. The representation of the applicant dated",,,

27.09.2020 was also rejected vide letter dated 06.10.2020 and it was indicated vide the said letter that the applicant was living in Ministry of Defence",,,

accommodation in an unauthorized manner since 2017.,,,

2. It is the contention of the applicant that he is posted in the same station, i.e. New Delhi as when the allotment of the present accommodation was",,,

done, therefore the said allotment holds good. He has filed letter dated 10.11.1994 of Dakshin Kaman Mukhayalaya by which it is stated that once",,,

accommodation has been allotted to Defence civilians, they will not normally be asked to vacate it, if exigencies of service so demand, they will be",,,

shifted to alternative accommodation appropriate to their status. As per the applicant, no alternative accommodation has been allotted to him. He has",,,

also pointed out that two employees namely Mr. Rajesh Punia and Mr. Rajan Lal are not entitled to the accommodation they are staying and they",,,

have not been asked to vacate. Furthermore, he has also questioned the authority who has passed the orders Sh. K. Hombaiah, stating that he is",,,

posted in Gurgaon and retains his accommodation in Palam.,,,

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

â??(i) That the Honâ??ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 17.09.2020,,,

(Annex.A/1), declaring to the effect the same is illegal, arbitrary and against the principle of natural justice and consequently, pass an",,,

order directing the respondents to allow the applicant to retain his quarter No.P/80/1 Type-III, Palam, New Delhi till his posting in New",,,

Delhi.,,,

(ii) Any other relief which the Honâ??ble Tribunal deem fit and proper may also be granted to the applicant along with the costs of,,

litigation.â??,,

4. The respondents have strongly denied the claims of the applicant. They have stated that it was clearly mentioned in the allotment letter dated,,

16.04.2014 that â??this allotment is valid only for the present tenure at AGE AF Palam and on the expiry of the aforesaid allotment, he will be deemed",,,

to be an unauthorized occupantâ??. They have also stated that the letter filed by the applicant dated 10.11.1994 is valid only for Southern Command,,

and is a local circular. Furthermore, the applicant has not applied for alternative accommodation. They have also stated that the two persons Mr.",,,

Rajesh Punia and Mr. Rajan Lal are posted on the strength of Garrison Engineer (P) Air Force, Gurgaon and are permanent industrial employees",,,

working in the area of jurisdiction in 13 BRD AF Palam, Delhi Cantt. Therefore,

they are not unauthorized occupants of the campus of 13 BRD AF,",,

Palam. They have denied any bias and stated that vide letter dated 27.07.2020 not only the applicant but two other employees, Mr. Om Prakash and",,,

Mr. Ashok Kumar Meena, were also given show cause notices for vacation of the premises which they were occupying. They have given details of",,,

the areas of jurisdiction of various allotment authorities, from which it emerges that civilian officials working in Engineer-in-Chief Branch, New Delhi",,,

are to be allotted accommodation by the Directorate of Estates while officials who are working in various other offices in Delhi are allotted,,

accommodation by various functionaries under the Ministry of Defence (MOD). Those working in HQ CWE (AF), Tughlakabad jurisdiction including",,,

GE (AF) Tughlakabad and GE(P) AF, Gurgaon, are allotted accommodation by CWE (AF), Tughlakabad, GE (AF) or GE (P) AF, Gurgaon on their",,,

pool. They have thus sought to make a distinction in the allotting authorities and entitlement for accommodation from different pools to officers posted,,

to various offices in New Delhi, to the effect that where the accommodation in question was allotted by functionaries under MOD, now the applicant",,,

can only get accommodation allotted by Ministry of Housing and Urban Affairs. The respondents have also stated that as per SRO 308/1978 the,,

applicant has to vacate the premises if transferred out from one jurisdiction to another. The respondents have further clarified that Sh. Hombaiah,,

continues to look after 13 BRD AF which is in charge of the accommodation where the applicant and Sh. Hombaiah reside.,,

5. Heard Sh. Yogesh Sharma, learned counsel for the applicant and Sh. Satish Kumar, learned counsel for the respondents, and perused the record.",,,

6. The very first document of note is the allotment letter dated 16.04.2014. It has the following clause:-,,

â??4. This allotment is valid only for the present tenure at AGE AF Palam. On the expiry of aforesaid allotment you will be deemed to be,,

an unauthorized occupant and liable for eviction/charging of damages, as provided by the Public Premises (Eviction of Unauthorized",,,

Occupants) Act, 1971 and action as deem fit will be initiated.â??",,,

From the above it is clear that the allotment was valid only for the applicantâ??s tenure at AGE AF Palam and after change of his assignment, if he",,,

continues to stay in the said premises he would be an unauthorized occupant and

liable for eviction/charging of damages. This letter of allotment and,,
its terms were accepted by the applicant and he did not demur for six years.,,

7. Rule 2 (n) of the Allotment of Residences (Defence Pool Accommodation for Civilians in Defence Services) Rules, 1978 [hereinafter referred to",,,

as â??Allotment Rulesâ??] states the following:-,,

â??2(n). â??Transferâ? means a transfer from one station to another station or from an eligible office to an ineligible office in the same,,

station and includes a transfer or reversion to service under a State Government or Union Territory Administration and also deputation to a,,

post in an ineligible office or organization.â??,,

From the above rule, it is clear that even if an official is posted in New Delhi itself but has moved from an eligible office to an ineligible office then it is",,,

treated as a transfer. Read with the letter of allotment, the applicantâ??s transfer to the Engineer-in-Chief establishment was an â??ineligibleâ??",,,

office, where allotment of accommodation was under the Ministry of Housing and Urban Affairs and not MOD. Furthermore, Rule 8 of the Allotment",,,

Rules, reads as follows:-",,,

8. Period for which allotment subsists and the concessional period for further retention:-,,

(1) An allotment shall be effective from the date of which it is accepted by the officer and shall continue in force until:-,,

(a) The expiry of the concessional period permissible under sub-rule (2) after the officer cease to be on duty in an eligible office at that,,

station;,,

,Events,"Permissible period for

retention of residence

(i),"Resignation, dismissal or

removal from service,

termination of service or

unauthorised absence

without permission.",1 month

(ii),"Retirement or terminal

leave",2 months on normal

licence fee and another
2 months on double the
normal licence fee
(iii), Death of the allottee, 12 months
(iv), "Transfer to another
military station", 2 months
(v), "Transfer to an ineligible
office at the same station", 2 months
(vi), "On proceeding on foreign
service in India", 2 months
(vii), "Temporary transfer in
India or transfer to a
place outside India", 4 months
(viii), "Leave (other than leave
preparatory to retirement,
refused leave, terminal
leave medical leave,
maternity leave or study
leave)", "For the period of leave
but not exceeding four
months. For the period
of maternity leave plus
leave granted in
continuation subject to
a maximum of five
months.
(ix), "Leave preparatory to
retirement or refused
leave granted under FR
86 or Earned leave

granted to Govt. servant
who retired under FR
56(i)", "For the full period of
leave on full average
pay subject to a
maximum 180 days in
the case of leave
preparatory to
retirement and four
months in other cases,
inclusive of the period
permissible in the case
of retirement.

(x), "Study leave in or outside
India", "a. In case the officer in
occupation of
accommodation below
his entitlement, for the
entire period of study
leave.

b. In case the officer is
in occupation of his
entitled type
accommodation for the
period of study leave
but not exceeding six
months provided that
where the study leave
extends beyond six
months he may be

allotted alternative
accommodation, one
type below his
entitlement on the expiry
of six months or from
the date of
commencement of the
study leave if he so
desires.

(xi), Deputation outside India, "For the period of
deputation but not
exceeding six months.

xii), Leave on medical grounds, Full period of leave

xiii), On proceeding on training, "For full period of
training

(xiv), "Transfer during the middle
the academic year of their
children.", "Upto six months beyond
the permissible period
of 2 months or till the
end of the School or
college academic year
of their children, which
ever is earlier, on
payment of double the
[normal licence fee]â??