
(2005) 08 DEL CK 0102
In the Delhi High Court
Case No : WP (C) 1493-96 of 2005

Union of India (UOI) and Others

APPELLANT

Vs

Dr. Jagdish Saran

RESPONDENT

Date of Decision : 23-08-2005

Acts Referred:

Administrative Tribunals Act, 1985 — Section 3

Citation : (2005) 08 DEL CK 0102

Hon'ble Judges : Sanjiv Khanna, J;Dr. M.K. Sharma, J

Bench : Division Bench

Advocate : R.V. Sinha, for the Appellant; Vinod Kumar and Malaya Chand, for the Respondent

Final Decision : Allowed

Judgement

Sanjiv Khanna, J.—The present writ petition is directed against the order of the Tribunal dated 25th August, 2003 in OA No. 180/2003. By the impugned order learned Tribunal has held that the respondent herein was not liable to pay damages of Rs. 38,596/- on account of his occupation of D-II Type flat in Kaka Nagar, New Delhi and accordingly, the aforesaid amount deposited by the respondent herein be refunded by the petitioner-Union of India.

2. Misuse of discretionary power relating to the allotment of accommodation to government employees was examined by the Supreme Court in the case of Shiv Sagar Tiwari Vs. Union of India and others, . It was found that allotments under the discretionary quota had shot up to 70% of the total number of allotments and these were being routinely made. The Supreme Court held that absolute discretion is a ruthless master and it is more destructive of freedom than any of the man's other inventions and thereafter deemed it appropriate to issue several directions. One of the directions issued by the Supreme court is reproduced below:-

"53. An out-of turn allottee is an ineligible person because he has not become

eligible as per the rules governing the allotment. So, strictly speaking, an out of turn allottee is required to pay damages, and as in these cases we are concerned with allotments made after 1.4.1991, the rate of damages could be either Rs. 40 or Rs. 45 per sq.m., as the case may be. We are, however, desisting from doing so and would rather require treating the cases at hand as overstay after cancellation of allotment. As already noted, in cases of overstay, twice the license fee becomes payable. We would like to make a distinction regarding the license fee to be charged depending upon the type of quarter allotted. For Type III we would require this to be twice the license; for Types IV and above three times the license fee."

3. Consequent to the above direction passed by the Supreme Court, Union of India raised a demand of Rs. 38,596/- from the Dr. Jagdish Saran-respondent herein towards damages for occupying flat No. D-II/64, Kaka Nagar, New Delhi as he was also one of the out of turn allottees. This demand was paid by the petitioner on 15th July, 1997. However, later on the respondent herein filed OA No. 180/2003 before the learned Central Administration Tribunal for refund of the said amount.

4. The learned Tribunal vide its order dated 25th August, 2003 has allowed the original application, inter alia, holding that the flat No. D-II/64 at Kaka Nagar, New Delhi was allotted to the petitioner under the discretionary quota prior to 1.4.1991 and, Therefore, not covered by the direction issued by the Supreme Court quoted above. Accordingly, the petitioner was directed to refund Rs. 38,596/- recovered from the respondent as damages.

5. Aggrieved, the petitioner-Union of India has filed the present Writ Petition. The learned counsel for the petitioner has submitted that the respondent was allotted D-II accommodation in Kaka Nagar vide offer of allotment dated 4.6.1991, which is after the cut off date of 1.4.1991 mentioned by the Supreme Court in its order and, Therefore, the order passed by the learned Tribunal is factually and legally incorrect. Learned counsel for the petitioner has also relied upon the judgment of a Division Bench of this Court in the case of Smt. Babli and Another Vs. Govt. of NCT of Delhi and Others, in which it has been held that disputes in respect of government residential accommodation cannot become subject matter of an application before Central Administration Tribunal unless the right to allotment or claim is shown to be a "condition of service". Relying upon this judgment it is submitted that the learned Tribunal did not have jurisdiction to direct refund of Rs. 38,596/- charged towards damages for illegal occupation of the accommodation as the dispute was not in respect of "condition of service".

6. The learned counsel for the respondent however, submitted that the Urban Development Minister had ordered for allotment of ad hoc allotment of D-II type flat to the petitioner on 22.10.1990, i.e., prior to 1.4.1991 and, Therefore, the respondent herein is not liable to pay any damages in terms of the judgment in the case of Shiv Sagar Tiwari (supra). It is submitted that the offer of allotment dated 4.6.1991 does not make any difference and is not relevant.

7. We do not think that the learned Tribunal had jurisdiction to entertain and decide the original application filed by the respondent herein. The allotment of the D-II type flat at Kaka Nagar under the discretionary quota cannot be regarded as a matter connected with or relating to "condition of service" as defined u/s 3(q) of the Administrative Tribunal's Act, 1985. The discretionary allotment of accommodation made in favor of the respondent herein was de hors and not under any service regulation or rules. The said allotment cannot be construed and regarded as a matter relating to "condition of a service". Service matters as defined u/s 3(q) of the Administrative Tribunal's Act, 1985 means all matters relating to "conditions of service of an employee". It is only in respect of these matters that the learned Tribunal has jurisdiction. Learned Tribunal cannot decide and adjudicate disputes that are not relating to "conditions of service" between Government and its employees. The Supreme Court in the case of Union of India (UOI) Vs. Rasila Ram and Others, has examined Section 3(q) including sub-clause (v) of the Administrative Tribunal's Act, 1985 with reference to proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and has held as under:-

"By no stretch of imagination the expression, "any other matter," in Section 3(q) (v) of the Administrative Act would confer jurisdiction on the Tribunal to go into the legality of the order passed by the competent authority under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. In this view of the matter, the impugned assumption of jurisdiction by the Tribunal, over an order passed by the competent authority under the Eviction Act, must be held to be invalid and without jurisdiction."

8. This Court in the case of Babli (supra) has referred to the aforesaid decision has laid down as under:-

"5. It must be clarified at the very outset that claim to allotment of Government residential accommodation does not become condition of service unless the relevant Service Rules provide so. No such rule was shown or pressed in service in the present case which provided for petitioners entitlement to residential accommodation. The expression "any other matter" occurring in Sub-clause V(sic) could not be also interpreted so liberally and loosely as to include any matter whatsoever whether or not it was related to employees service condition. The words "any matter" would be read *esjuda generis* and in the context of provisions of Rule 3(Q)(sic). Otherwise any contrary interpretation placed on it would lead to absurd results and would make Tribunal a Forum for all matters including private matters of an employee. That indeed cannot be the intent and purpose of this Rule (sic) which defines the service matters for purposes of giving jurisdiction to Tribunal. An employee's non-charging of HRA would be inconsequential in this regard and would not convert his claim for residential accommodation to service condition.

6. As regards pool Rules, they only regulate the allotment of Government accommodation and do not confer any right as such on an employee to claim it."

9. In view of the aforesaid, out of turn allotment under discretionary quota to a government servant de hors the Rules cannot be regarded as a matter relating to "conditions of service". The respondent has not been able to point out any service rule under which he was entitled to said accommodation under the discretionary quota. On the other hand, in the judgment of the Supreme Court in the case of Shiv Sagar Tiwari (supra) it has been held that the discretionary allotments made represent a scenario of what has come to be known as a Housing Scam. While dealing with the issue of damages to be charged from the out of turn allottees on account of their illegal occupation, the Supreme Court held that discretionary allotments de hors the rules to an ineligible person, entitles the government to charge damages. The recovery of damages from the respondent herein is, Therefore, made as per the directions given by the Supreme Court and not on account of "conditions of service", and it is difficult to construe and regard a direction given by the Supreme Court as a matter relating to condition of service between the petitioner and the respondent herein.

10. In view of the above, we hold that the learned Tribunal did not have jurisdiction to entertain the original application filed by the respondent herein and the impugned order is illegal and void abinito.

11. In view of above findings, we are not required to examine and go into the merits of the controversy. However, from the records placed before us, it is apparent that the allotment letter or the letter of offer in respect of flat No. D-II/64, Kaka Nagar, New Delhi on ad hoc basis is dated 4.6.1991, which is after the cut off date of 1.4.1991 specified by the Supreme Court in the case of Shiv Sagar Tiwari (supra). The respondent herein occupied the flat only after the allotment letter dated 4.6.1991 was issued and the date of the letter of offer of allotment should be treated as the date of out of turn allotment. Thus as per the directions given by the Supreme Court quoted above the respondent herein was liable to pay damages. No other contention was raised and argued before us.

11. In view of the above, the present writ petition is allowed and the impugned order dated 28th August, 2003 is quashed and set aside.

12. No costs.