

(2007) 11 AHC CK 0032
In the Allahabad High Court

Union of India (UOI) and Others

APPELLANT

Vs

Rajeev Kumar Tyagi and Another

RESPONDENT

Date of Decision : 23-11-2007

Acts Referred:

Citation : (2008) 116 FLR 225 : (2010) 2 SLJ 90

Hon'ble Judges : Sudhir Agarwal, J;S. Rafat Alam, J

Bench : Division Bench

Judgement

S. Rafat Alam and Sudhir Agarwal, JJ.—We have heard Dr. Ashok Nigam, learned Additional Solicitor General of India assisted by Sri Subodh Kumar, learned Counsel for the petitioners and Sri K.P. Singh, learned Counsel for respondent No. 1.

2. Aggrieved by the order dated 8.11.2007 passed by the Central Administrative Tribunal, Allahabad Bench, Allahabad (in short the "Tribunal") in Original Application No. 995 of 2007 (Rajeev Kumar Tyagi v. Union of India and Ors.) the petitioners have filed his writ petition in so far as it has directed the petitioners to allow respondent No. 1 to retain official accommodation at Rampur till 31.12.2007.

3. It is contended that respondent No. 1 was transferred from Rampur to Moradabad on 16.6.2007 and pursuant there to he already joined on 14.8.2007. In his capacity as Deputy General Manager (MSC-WLL) he is entitled for official accommodation at Moradabad which has been allotted vide order dated 5.10.2007 (Annexure-5 to the writ petition) and, therefore, he cannot be allowed simultaneously to retain official accommodation meant for Divisional, Manager (Telecom); (TDM) at Rampur, and, therefore, the Tribunal has erred in permitting respondent No. 1 to retain the official accommodation till 31st December, 2007 and the said direction of the learned Tribunal is contrary to the Rules. He further contended that in the original application the dispute was only with respect to the legality of the transfer order and the relief sought for therein was to quash the transfer order dated 16.6.2007 and no relief was sought with

respect to retention of, official accommodation at Rampur, yet the learned Tribunal has passed the impugned order which is beyond the scope of final relief sought in original application.

4. Sri K.P. Singh, learned Counsel appearing for respondent No. 1 contended that he has been allowed to retain official accommodation at Rampur till 31st December, 2007 by means of the impugned order so that original application itself may be decided expeditiously. It is also contended that despite repeated time having been granted by the learned Tribunal to the petitioners, no counter affidavit has been filed by them. He further stated that the family of respondent No. 1 is residing at Rampur and in the midst of session, he ought not to have been shifted otherwise irreparable loss would cause to his children and, therefore, the Tribunal has granted the said indulgence. He lastly contended that there are two suitable accommodations for Class-I Officer at Rampur and even if respondent No. 1 is allowed to retain the official accommodation till 31st December, 2007 it would not cause any prejudice to the Officer, who has joined at Rampur as Divisional Manager (Telecom) since he can stay in the alternative accommodation meant for Class-I Officers.

5. We have considered the aforesaid submissions and perused the record.

The respondent No. 1 has only challenged the validity of the transfer order dated 16.6.2007 in the original application before the Tribunal and the reliefs claimed therein are reproduced as under:

(a) To issue order or direction in the nature of certiorari quashing the transfer order dated 16.6.2007 passed by the DGM (Administration) with the approval of the competent authority, Annexure-1 to this original application.

(b) To Hon"ble Tribunal may pass such other and further reliefs as may be deemed fit and proper in the circumstances of the case; and,

(c) To award cost of the applicant.

6. Evidently, there was no relief sought for with respect to retention of official accommodation at Rampur but he has requested the Tribunal by way of interim relief to allow to retain the possession of the aforesaid accommodation at Rampur. The interim relief sought for by the applicant is neither incidental nor otherwise ancillary to the final relief sought for in the original relief and it cannot be said that in case the interim relief sought for in the original application is not granted, the final relief sought for in the original application could not have been adjudicated or granted, in either way effectively and, therefore, in our view, the interim relief in the original application was beyond the final relief sought for in the original application. The learned Tribunal has erred by not considering this aspect of the matter while passing the interim order permitting respondent No. 1 to retain the official accommodation till 31st December, 2007. Moreover it is not disputed that in the capacity of Deputy General Manager at Moradabad, respondent No. 1 is entitled for official accommodation at Moradabad and he has

actually been allotted such accommodation thereat.

7. A Government servant holding a transferable post cannot be allowed to retain official accommodation at two places, particularly at the place wherefrom he has been transferred. Further he cannot retain official accommodation at the place of transfer beyond the period permissible in Rules. No provision has been shown to us by respondent No. 1 that he could have retained official accommodation at Rampur also despite the fact that he has been allotted official accommodation at Moradabad.

8. Learned Counsel for respondent No. 1, however, contended that he has not taken the possession of the official accommodation at Moradabad and, therefore, it cannot be said that he has two official accommodations. In our view, non-possession of official accommodation at a place where a Government servant is posted, will not make any difference. Once allotment is made by the competent authority, the right of an employee to retain official accommodation at any other place would come to an end in any circumstances. Moreover, allotment or non allotment of official accommodation at the place of posting does not vest any right upon the Government employee to retain official residence wherefrom he has been transferred. Irrespective of the fact that whether the Government servant has been or not has been allotted official accommodation at the place where he has been transferred, he has to vacate the official accommodation at the place wherefrom he has been transferred after the period permitted under the Rules is expired.

9. In this view of the matter, we are clearly of the view that the respondent No. 1 was not entitled either under the Rules or otherwise, to retain official accommodation at Rampur once he has been transferred to Moradabad and joined there at and the period prescribed in the Rules for retention of official accommodation at Rampur has already expired. Therefore, the order of the learned Tribunal cannot sustain.

10. At this stage Sri K.P. Singh, learned Counsel appearing for the respondent No. 1, after receiving instructions, from respondent No. 1 through his pairkar, stated that he may be accommodation at Rampur and gave an undertaking that he shall vacate the aforesaid accommodation positively by 7th December, 2007. Dr. Ashok Nigam, learned Additional Solicitor General of India, has no objection in case indulgence to the aforesaid extent, is granted by this Court.

11. In view of the facts and circumstances and considering the undertaking tendered by respondent No. 1 and also the fact that he is already occupying the accommodation at Rampur for almost more than five months and is ready to vacate the same within 15 days from today, the impugned order of the Tribunal is modified to the extent that respondent No. 1 shall vacate the official accommodation meant for Divisional Manager (Telecom) at Rampur, occupied by him, by 7th December, 2007 positively and shall hand over its possession to the competent authority at Rampur failing which the District Magistrate, Rampur

after receiving instruction from the competent authority of the petitioners shall take action immediately and get the aforesaid accommodation vacated forcibly, and if necessary, evict respondent No, 1 with the help of police force.

With the aforesaid modification, this writ petition stands finally disposed of. No costs.