

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 14.08.2013

+ W.P.(C) 3657/2013

SHAILENDER KUMAR AGGARWAL

..... Petitioner

Through: Counsel for the petitioner

versus

THE DIRECTOR OF ESTATES & ORS.

..... Respondents

Through: Mr B.V. Niren, Adv for Respondents 1 and 2

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

Quarter No. D-48, Dress Lane, Minto Road, was allotted to Mr G.C. Aggarwal, father of the petitioner. The petitioner, Shailender Kumar Aggarwal, was also residing in the said quarter with his father. On retirement of his father, the aforesaid quarter was not vacated and the petitioner continued to reside there. The petitioner applied for regularization or out of turn allotment of the aforesaid quarter in his favour. The said request having not been acceded to and proceedings under Public Premises (Eviction of Unauthorized Occupants) Act having been initiated, OA No. 660 of 1991 was filed by the petitioner before the Central Administrative Tribunal. Vide order dated 31.03.1993, the said Tribunal allowed the petitioner to

continue in the aforesaid accommodation as a special case, till his turn for allotment under Postal Pool matured, according to his entitlement.

2. In *W.P.(C) No. 585 of 1994*, *Shiv Sagar Tiwari vs. Union of India*, the Hon'ble Supreme Court came to consider the occupation of the aforesaid quarter by the petitioner and held that the Tribunal was not justified in issuing the aforesaid direction. The Apex Court, however, noted that the Directorate of Estate had not passed any special order, as directed by the Tribunal. The Directorate of Estate was directed to do so within two weeks. It was also made clear that henceforth the petitioner would be required to pay market rent for occupation of the aforesaid quarter.

3. Subsequent to the order of the Apex Court, a Type-III accommodation was allotted to the petitioner by BSNL. The petitioner then filed *W.P.(C) No. 4023 of 2007*, seeking allotment of a suitable accommodation and claiming that he was entitled to a Type-IV accommodation. The writ petition was disposed of with liberty to the petitioner to challenge the decision of BSNL by filing an independent writ petition. The petitioner, thereafter, filed *W.P.(C) No. 8649 of 2010*, seeking quashing of the allotment order dated 21.08.2010, whereby a Type-III accommodation was allotted to him. During the course of hearing of the said writ petition, the counsel for respondent No. 3 in that writ petition brought it to the notice of the Court that they had taken a policy decision to allot only Type-III

accommodation to the employees, who fell in NE-11 viz., who were drawing a revised pay scale of Rs 16370-30630 and, therefore, the petitioner was not entitled to allotment of a Type-IV accommodation. Rejecting the writ petition, this Court, inter alia, held as under:

“Counsel for the petitioner claims that if the petitioner had been allotted the flat before implementation of policy, he would have got Type-IV accommodation in accordance with the instructions contained at the back of the printed form, however, this argument is without merit because the order passed by the learned Single Judge of this Court is dated 6.10.2010 in W.P.(C) No. 4023/2007 and which reiterated the previous order dated 29.7.2010, and as per the said order, relevant portion of which have been reproduced above, allotment was to be made within a period of two weeks of the date of submission of the application by the petitioner. Since the petitioner has submitted the application admittedly on 5.8.2010, and as on this date, as per the applicable policy, the petitioner only was entitled to Type-III accommodation, petitioner cannot claim entitlement to Type-IV accommodation.”

4. It would thus be seen that the Court was of the view that the policy dated 29.07.2010 would apply to the petitioner since application for allotment was submitted by him only on 05.08.2010, when the said revised policy had already come into force. Now, the petitioner is again before this Court, challenging the policy/circular dated 29.07.2010, revising the criteria for allotment of BSNL Pool

Residential Accommodation and also seeking a direction to respondent No. 3-BSNL to allot a Type-IV accommodation to him.

5. The communication dated 29.07.2010, to the extent it is relevant, reads as under:-

“In view of the notification issued by Directorate of Estates vide its notification dated 21.08.2009 in respect of eligibility criteria for allotment of quarters in CDA pay scales as Grade pay, it has been decided to revise the eligibility criteria for allotment of BSNL-pool residential accommodations in the revised pay scales to the executives/non-executives in BSNL in IDA Pay scales. Accordingly, the following eligibility criteria for allotment of BSNL-pool residential accommodations in IDA pay scales have been approved by the competent authority of BSNLCO.

Sl.No.	Type of Quarter	Eligibility criteria for allotment of BSNL-pool residential accommodation in IDA pay scales.
1.	Type-I	NE-I, NE-2, NE-3, NE-4
2.	Type-II	NE-5, NE-6, NE-7, NE-8 & NE-9
3.	Type-III	NE-10, NE-11, E-1A & E-2A
4.	Type-IV	E-3, E-4 and E-5
5.	Type-IV (Spl)	E-4 and E-5
6.	Type-V (A) & Type-V(B)	E-6 and E-7
7.	Type-VIA. Type-VIB & above	E-9 & above

2. It is also intimated that the above mentioned eligibility criteria will not have any effect to the quarter already allotted to the officers/officials in the field unit of BSNL and the same will be continued till it is vacated. All other terms & conditions for preparing waiting list for allotment of quarter will be the same as clarified by Directorate of Estates from time to time please.”

6. The contention of the learned counsel for the petitioner is that since the petitioner had already become eligible for allotment of a residential accommodation from BSNL before the eligibility criteria came to be revised, the revised criteria would not apply to him. The contention, to my mind, is wholly misconceived and in fact has already been rejected by this Court, while dismissing W.P.(C) No. 8649/2010, when the Court held that the eligibility criteria prevailing on the date of submission of the application would be applicable. The same plea cannot be entertained in another writ petition. On merits, I find no illegality in the respondent-BSNL revising the eligibility criteria for allotment of accommodation to its employees. No employee has a vested right to obtain allotment of an accommodation from his employer, despite his being eligible to obtain such an allotment. So long as no allotment is made to an employee, the employer is very much entitled to revise the criteria laid down by it for allotment of accommodation to its employees. The petitioner has failed to show how and in what manner the revision of eligibility criteria is illegal, irrational or without justification. Nothing in law precludes the employer from reviewing the eligibility criteria for allotment of residential accommodation to its employees and make such changes as are deemed appropriate by it. The Court cannot interfere with a policy decision of this nature unless it is shown to be illegal, arbitrary or without jurisdiction. Neither the revision of eligibility criteria is without jurisdiction nor does it violate any statutory

provision. The eligibility criteria came to be revised by BSNL considering a notification, issued by Directorate of Estate on 21.08.2009, changing the eligibility criteria for allotment of quarters in CDA pay scales as grade pay. The respondent-BSNL, therefore, decided to revise the eligibility criteria for allotment of its residential quarters in the revised pay scales to its employees in IDA pay scales. The eligibility criteria has to be decided taking into account a number of factors, including the number of quarters available in each type and number of employees in various pay scales. It is for the employer and not for the Court to go into exercise of this nature and fix an appropriate criteria. As far as the existing allottees are concerned, the revision of eligibility criteria does not affect them as stipulated in clause (2) of the Circular dated 29.07.2010.

The present writ petition is nothing, but yet another attempt by an unsuccessful litigant to re-agitate the very same issue which in the earlier round of litigation was decided against him.

The writ petition is hereby dismissed.

V.K. JAIN, J

AUGUST 14, 2013
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