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

+ W.P.(C) 11026/2016

Date of Decision : 23rd November, 2016

SHUSHEELA KUMARI Petitioner
Through Ms. Sonia A. Menon, Advocate

versus

UNION OF INDIA & ORS. Respondents
Through Mr. Sanjay Dewan and Ms. Palak
Rohmetra, Advocates for R-3 & R-4

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL)

CM Nos.43089/2016 and 43090/2016

1. Exemption allowed subject to all just exceptions.
2. The applications stand disposed of.

W.P.(C) 11026/2016 & CM No.43088/2016

1. Having heard counsel for the petitioner we are not inclined to interfere with the impugned dated 30.08.2016 of the Central Administrative Tribunal, Principal Bench dismissing OA No. 2017/2015 and the order dated 30.09.2016 dismissing RA No. 214/2016.
2. The petitioner is employed as a Librarian with the Directorate of Education, Government of NCT of Delhi. She works as a Librarian in their schools.

3. The petitioner's husband was an employee of the Government of India. From 01.04.1994 they have been residing in the accommodation provided to the petitioner's husband by the Government of India, viz. House No. 25/5, Sector-1, Pushp Vihar, New Delhi-17. The petitioner's husband having superannuated on 31.07.2014 was allowed to retain the accommodation of the Government of India till 31.03.2015.

4. The petitioner is an employee of the respondent No.1 - Government of NCT of Delhi (GNCTD, hereafter) made a number of representations to the fourth respondent - Secretary, Public Works Department, GNCTD requesting for allotment of accommodation from the pool of the GNCTD, for inter pool exchange of Governmental accommodation, for the regularisation of the accommodation allocated to her husband in her name. Thereafter she had approached the Tribunal in OA No. 1225/2015 wherein directions were issued to the respondents to take a decision on the representation of the petitioner and communicate the decision taken through a reasoned and speaking order. Thereafter the respondents passed the order dated 14.05.2015, rejecting the request for inter pool exchange which was challenged in OA 2017/2015. By the impugned order the OA has been dismissed.

5. It is an accepted and admitted fact that GNCTD have independent, distinct and separate employee houses. Employees of the Government of India would be entitled to and are allocated accommodation from the pool of houses under the Directorate of Estates, of the Government of India, whereas employees of the GNCTD would be entitled to houses belonging to the GNCTD.

6. Learned counsel for the petitioner relies on the Office Memorandum

dated 18.02.2014 issued by the Government of India, Ministry of Urban Development, Directorate of Estates. This memorandum lays down guidelines for regularization/allotment of accommodation in the name of an eligible spouse/ward in the event of the death/retirement/transfer of the allottee-employee of the Government of India. To be eligible the spouse/ward must, inter alia, be employees of the Government of India. The said memorandum therefore would not be applicable in the present case as the petitioner is an employee of GNCTD and not an employee of the Government of India.

7. A Separate Office Memorandum dated 03.11.1993 issued by the Directorate of Estates relates to inter pool exchange of government accommodation. The memorandum records that the Government of India had earlier decided that no fresh inter pool exchange of General pool accommodation with any departmental pool accommodation was to be made. The said universal stipulation was partially modified in specified cases. The relevant sub-paragraphs of Paragraph 2 of the Office Memorandum dated 03.11.1993 reads as under:-

"2. (a) Where an officer in occupation of General pool accommodation has gone to Delhi Administration or any of their other offices like MCD, NDMC, DDA, etc. and in return another officer from one of these organisation has come to serve Govt. of India along with an accommodation, inter-pool exchange may be agreed to on one to one basis in all such case.

(b) Since Delhi Administration allows its officers to retain accommodation when they are transferred to MCD, NDMC, DESU, DDA and other such organisations under Delhi Administration, if an officer occupying General pool

residential accommodation is transferred to one of such organization, Delhi Admn./DDA shall provide an equivalent type of accommodation to the General pool.

(c) Wherever such one to one exchange is of the same type of unit it may be allowed with the mutual consent of Secretary (Land & Bldg.), Delhi Administration and Director of Estates. Similar inter-pool exchanges may also be permitted with the consent of Vice Chairman DDA in cases where the exchange of General pool with DDA is involved. Wherever the exchange is not in the same type the proposal may be decided on merits after getting the view of Secretary (Land & Bldg.)/Vice-Chairman DDA with the approval of the Joint Secretary/Addl. Secretary.

(d) In lower types i.e. Type-I to IV, exchange shall be permitted only if the Delhi Administration/ DDA provides accommodation in the areas where General pool accommodation is available.

(e) For organisation like MCD, NDMC, DESU & others where the officers of Delhi Administration on their posting continue to be eligible for Delhi Administration accommodation, if an officer occupying general pool accommodation is transferred to such an organization, Secretary (Land & Bldg.), Delhi Administration would be the focal point for considering any inter-pool transfers and any decision on such inter-pool exchange would be taken on the advice of Secretary (Land & Bldg.) Delhi Administration."

It is not the case of the petitioner that she would be covered by the clauses (a) to (c) and (e) mentioned in the aforesaid memorandum. She relies upon, and her claim is predicated on, clause (d) of the office memorandum quoted above.

8. A reading of the clause (d) would indicate that it does not provide an

exception where cases of inter pool exchange are to be permitted. It only stipulates, the acceptable accommodation which can be made the subject matter of inter-pool exchange i.e. Type I to Type IV accommodation. Inter-pool exchange amid Type I to Type IV accommodation can be permitted if the Delhi Administration/DDA provides accommodation in areas where general pool accommodation is available.

9. The Tribunal has relied on Office Memorandum dated 27.12.1991 issued by the Delhi Administration (now the GNCTD). The relevant paragraph of Office Memorandum dated 27.12.1991 reads as under:-

“13. Eligibility of teachers and other staff working in the school of GNCT of Delhi.

It has been decided that the teachers and other staff of the schools of Delhi Administration will not be eligible for initial allotment from General Pool in Delhi. However, the allotments already made to them by the Directorate of Estate will not be disturbed and will continue to be treated as lawful allotments. It has also been decided that change allotment in the same type will also be admissible to teachers and other staff of schools of Delhi Administration who are already allottees of General Pool accommodation. Those who are already registered for in-turn change will be allowed their due seniority for such change of accommodation in the same type. It has also been decided that any consequential benefits which may accrue to an allottee under the allotment rules on account of his being in occupation of General Pool accommodation will also be admissible to them i.e. they will be allowed retention after cancellation of allotment admissible under SR-317-B-22, temporary allotment for marriage purposes, regularisation on retirement/death grounds to their wards in case their ward is employed in an eligible office. However, the benefit of regularisation on retirement/death will not be admissible to ward of such allottees in case the ward is

employed as teacher or in the staff of a school in the Delhi Administration.”

(emphasis supplied)

10. As per aforesaid clause, benefit of inter change pool of accommodation would not be available to the teachers or other staff of the schools in the Delhi Administration i.e. GNCTD. That being the position, we must agree with the Tribunal that the petitioner is not entitled to inter-pool change of accommodation.

11. The petitioner's contention, that she is aware of cases where benefit of inter-pool change has been granted to teachers/ school staff of the GNCTD, would not justify granting relief to the petitioner. We would not be inclined to negate or nullify the said policy or guidelines. The right to equality and equal treatment mandated by Article 14 confers a positive right and would not permit us to pass an order to act contrary to the policy/guidelines, which are not under challenge and questioned.

12. The writ petition is accordingly dismissed.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

NOVEMBER 23, 2016

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