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

+ **W.P.(C) 4983/2017 & CM No.21512/2017**

UNION OF INDIA & ANR

..... Petitioners

Through: Mr.Vijay Joshi, Sr. Panel Counsel
with Mr.Harvesh Kumar, Assistant
Director (Legal)

versus

NARENDER KUMAR KATARIA

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

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31.08.2017

The petitioner has preferred the present writ petition assailing the order dated 21.09.2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No.2853/2015 whereby the original application moved by the respondent-applicant has been allowed and the petitioner has been directed to regularise the house allotted to the Respondent/applicant in 1997 at J-945, Kalibari Marg, New Delhi with effect from the date of his return to the parent department.

The relevant and brief facts are that the respondent is a Government servant and has been allotted the aforesaid accommodation. After retirement of his father on 30.10.1996, the respondent applied for regularisation of the same house as per the rules. This request was acceded to by the petitioner on 02.04.1997. The Director of Estates issued the letter of allotment in favour of the respondent. Since then the respondent continued to occupy the said accommodation in his own name. The respondent joined South Delhi Municipal Corporation on deputation on 22.04.2013. He made a representation to allow him to retain the aforesaid house on educational grounds. He was permitted to do so for six months after payment of enhanced licence fee in accordance with the rules. The extended period also expired on 21.12.2013. He made further application for retention of the house for the period of his deputation to the SDMC. His representation was rejected on the ground that SDMC was not in the eligible category for allotment of General Pool accommodation. The allotment of the respondent was cancelled.

The respondent then preferred the aforesaid OA on 31.07.2015. Vide interim order dated 05.08.2015, the Tribunal allowed the respondent to continue in that house, as an interim measure. Before the tribunal, it was pointed out that the respondent had already given up his deputation and returned to his parent department on 06.01.2015. The petitioner submitted that the allotment to the respondent in 1997 was only on adhoc basis since the respondent's

date of priority was 28.07.1994 while the employees with priority dates 1978 and 1972 are still being considered for allotment of flats in that area in question. The Tribunal has rejected this submission of the petitioner, on the premise that once the allotment had been made to the respondent in the year 1997 in accordance with the rules, it would not be open to the petitioner to reopen the said issue. On a query by us, as to how some employees with the priority dates of 1978 and, particularly, 1972 are still being considered for allotment of flats considering the fact that, till date, nearly 45 years have elapsed, learned counsel for the petitioner has no satisfactory answer.

The submission of learned counsel for the petitioner is that accommodation at Lodhi Road and Kali Bari Marg is priority accommodation. We cannot accept this submission of the petitioner for the reason that the petitioner itself has made the allotment to the respondent in the year 1997. The problem arose only on account of the fact that, the respondent went on deputation with the SDMC. If that had not happened, the petitioner possibly could not have cancelled the allotment. The respondent, in fact, gave up his deputation and returned to his parent cadre, so as to retain the accommodation on account of educational needs of his children. In our view, the petitioner could not have cancelled the allotment of the respondent, considering he had come back to his parent cadre and had again become eligible for general pool accommodation. We have not examined the issue of right of the petitioner to claim any further

charges from the respondent as no such claim has been made by the petitioner in the present proceedings. Pertinently, the respondent has been charged at the market rate till the date of return to his parent department thereby regularising the entire period of his stay. We may also observe the submission advanced by the petitioner on the last date that that allotment initially was made in the year 1997 on ad-hoc basis. The allotment letter placed on record does not reflect the said position. The respondent could have no reason to believe or assume that his allotment was ad-hoc. It also leaves us bewildered that the so called ad-hoc allotment continued from 1997 till 2016 without any objection. There is no reason to accept the submission of the petitioner that the allotment made in 1997 was ad-hoc. Dismissed.

VIPIN SANGHI, J

REKHA PALLI, J

AUGUST 31, 2017
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