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

% Judgment delivered on: 18.11.2022

+ W.P.(C) 15908/2022

DELHI DEVELOPMENT AUTHORITY

..... Petitioner

versus

BRIJESH KUMAR MISHRA

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Ms. Sriparna Chatterjee, Advocate.

For the Respondent : Respondent-in-Person.

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner – Delhi Development Authority ('DDA') impugns order dated 21.09.2017, whereby the Original Application ('OA') filed by the respondent has been disposed of and the petitioner has been directed to charge licence fee/ rental from the Applicant for overstaying in the quarter from 27.10.2015 to 26.11.2015 (31 days) in accordance with SR 317-B-22 and the petitioner has been directed to pass an appropriate order to the said effect.

2. Issue notice. Notice is accepted by respondent, who appears in person. With the consent of parties the petition is taken up for final disposal today.

3. Respondent, who joined the service in the Indian Railways in 1993, joined as Commissioner (Land Management) in DDA on 22.11.2012 on deputation. The deputation was for a period of five years. On 13.02.2013, Quarter No. A-3, Old Rajinder Nagar, New Delhi, a Type-V quarter was allotted to the respondent, which was occupied by him on 25.03.2013.

4. On 25.08.2015, prior to the expiry of the normal period of deputation, an order was passed by the Ministry of Urban Development repatriating the respondent. On 26.08.2015, an order of repatriation was passed by the DDA.

5. On 27.08.2015, an Original Application ('OA') was filed by the respondent, in which on 28.08.2015, an order was passed by the Tribunal not to relieve the respondent.

6. On 29.09.2015, the OA filed by the respondent impugning repatriation, was dismissed by the Tribunal and consequently, on 30.09.2015, respondent reported to the Railway Board for further posting orders.

7. The petitioner informed the respondent that since he had been repatriated, he would be entitled to retain the allotted quarter for a period of two months, which would have ended on 26.10.2015 and required him to vacate the quarter. He was also informed that on his failure to vacate the quarter, damage rent shall be charged, which is 50 times the normal standard licence fee.

8. Respondent represented against the same and requested for further time to continue to occupy the quarter. One of the reasons cited was, the

fact that his daughter was studying in class X and it would have disrupted her academic schedule.

9. We notice that the Competent Authority rejected the request of the respondent for extension of time to vacate the quarter and decided to charge the damage rent.

10. One of the issues raised by the respondent is that no proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 were initiated prior to raising a claim of any damage rent. The other ground raised by the respondent was that in terms of SR 317-B-22, in special cases the Directorate of Estate has powers to permit an employee to retain a residence for a period not exceeding six months, beyond the period permitted under SR 317-B-11 (2) on payment of twice the flat rate of licence fee or twice the licence fee he was paying, whichever is higher.

11. The request of the respondent for applying SR 317-B-22 has also been rejected.

12. We have noticed that there are certain peculiar facts and circumstances involved in the present case. Respondent, who had come on deputation to DDA had come for a normal period of five years, however, the deputation was terminated midway and he was directed to be repatriated. The issue with regard to repatriation does not arise for consideration in these proceedings and we may note that respondent has also joined back the department, to which he was repatriated i.e., Indian Railways.

13. The order of repatriation was challenged by the respondent and initially there was an interim order in his favour, which continued till 29.09.2015. Respondent has also admittedly vacated the allotted accommodation on 26.11.2015. The period involved is between 27.10.2015 and 26.11.2015 (31 days).

14. The petitioner has placed on record the office noting whereby, the request of the respondent for special dispensation by the Directorate of Estate for considering the case as a special case was dealt with. We may note that the issue which was deliberated at the time of consideration of his request primarily turned on, “what cases would fall in special category”, in which the special dispensation could be exercised by the Competent Authority. The office noting indicates that the Competent Authority had not given extension under special case category and were of the view that litigation could not be considered as a special case for extension.

15. Though, the petitioner may be correct in opining that litigation *per se* cannot be considered as a special case category, however, in the facts of the present case, it is not only litigation but there are several other factors which would bring the case of the respondent in the category of special cases.

16. We may note that the respondent had initially been sent of deputation for a period of five years, which was terminated midway. Respondent had also approached the Tribunal and there was an interim order in favour of the respondent which continued till 29.09.2015.

17. The office notings also indicate that in cases where posting of an officer is within Delhi, the normal period of retention is two months and in case, the posting order was for a station outside Delhi, further six months were allowable. In the case of the respondent, though respondent was repatriated to the Indian Railways, he was not informed as to whether he had been repatriated to a station in Delhi or outside Delhi and this order of deciding to post him in Northern Railways came only on 26.10.2015. Even on 26.10.2015, the orders were passed to post him to Northern Railways and by that time, it was not stated as to whether he was posted to Delhi or outside Delhi and the order of positing to Delhi came only on 02.11.2015 consequently, till 02.11.2015 respondent was not even aware as to whether he is posted to Delhi or outside Delhi. Had he been posted outside Delhi, admittedly, as per the case of the petitioner, he was entitled to an extension of six months beyond the period of two months which ended on 26.10.2015.

18. We may also refer to a circular dated 15.10.2015 issued by DDA, wherein the DDA has decided to re-develop staff colonies at Old Rajinder Nagar and Mayur Vihar, Pocket-III, Phase-I under the Scheme of “Redevelopment of Group Housing Areas as per MPD-2021- DDA staff quarters” and the circular stipulates that no further allotment/ change of staff quarter would be made within these colonies. The colony where the subject staff quarter is situated is Old Rajinder Nagar and covered by the circular.

19. In that view of the matter, the staff quarter was not liable to be allotted to any other officer and, as such, retention by the respondent for

an extra period of 31 days has not caused prejudice to any other officer waiting for allotment.

20. In our view, the above noted facts constitute special facts and circumstances, and fall in the category of special cases as contemplated under SR 317-B-22. We are of the view that this was a fit case where the Directorate of Estate should have exercised discretionary power and granted an extension of 31 days to the respondent on payment of twice the flat rate of licence fee or twice the licence fee that he was paying, whichever is higher.

21. In view of the fact that we have found the facts and circumstances of the case of the respondent constituting a special case as required under SR 317-B-22, we feel that no purpose would be served in remitting the matter to DDA to pass any fresh order, as directed by the Tribunal.

22. Accordingly, we dispose of the petition with a direction that the case of the respondent be treated as a special case in terms of SR 317-B-22 and the respondent be directed to pay twice the flat rate of licence fee or twice the licence fee that he was paying, for the entire period of overstayal.

23. Petition is accordingly disposed of in the above terms.

24. We clarify that this order has been passed in the peculiar facts and circumstances of the case, as noticed hereinabove and accordingly, shall not be treated as a precedent.

SANJEEV SACHDEVA, J

TUSHAR RAO GEDELA, J

NOVEMBER 18, 2022/nd