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

+ **W.P.(C) 15254/2022 & CM APPL. 47232/2022**

ANIL KUMAR MITTAL AND OTHERSPetitioners

Through: Mr. Jacob Benny, Mr. Shashank Rai,
Advocates.

versus

DELHI JUDICIAL ACADEMY AND ORSRespondents

Through: Ms. Nidhi Raman, CGSC with Mr.
Zubin Singh, Advocate for R-1.
Ms. Harshita Nathrani, Mr. Vedansh
Vashisht, Advocates for Mr. Sameer
Vashisht, ASC (Civil) for GNCTD.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

02.08.2024

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1. The Petitioners are employees of Respondent No. 1, Delhi Judicial Academy, working at different posts such as bus drivers, caretakers/upper division clerks, photocopy machine operators, library clerk, etc. They were allotted staff quarters which are in the premises of the Delhi Judicial Academy itself. In accordance with their posts, the Petitioners were entitled to either Type-I and Type-II accommodations. However, since those were not available, they were allotted Type-III and Type-IV staff quarters, which were in surplus.

2. In this background, when an audit of the financial statements of Respondent No. 1 was conducted in 2019 by Respondent No. 2, the audit report advised that the Petitioners should be charged three times the normal



rate as license fee since they had been allotted quarters in a higher category of accommodation. In this regard, reliance was placed on the instructions issued through Office Memorandums (OMs) dated 13th October, 2003, 28th October, 2010 and 12th January, 2012 by Respondent No. 3. For the sake of ready reference, the relevant documents are extracted hereunder:

Copy of Paragraph No. 1 of the Audit Report dated 4th November, 2019 issued by Respondent No. 2:

**CURRENT AUDIT REPORT
(2018-19)**

PARA-1: Details of staff quarters and occupancy.

Audit Memo No.5

Dated: - 04/11/2019

Delhi Judicial Academy provided the following information in the prescribed format:-

(1)

S.No.	Name of officer/ official & Desig.	Address of allotted quarter	Entitlement of staff quarter	Type of quarter Allotted	Date of allotment
1.	Mr. Harkesh, Caretaker	Flat No.303, DJA	Type-II	Type-IV	03.04.2017
2.	Ms. Shweta, Assistant	Flat No.301, DJA	Type-III	Type-IV	04.01.2017
3.	Ms. Surbhi Karwa and Ms. Deepa Walia, Law Researchers	Flat No.201 (Transit Hostel for Girls)	Transit Hostel for Girls	Type-IV	06.06.2019
4.	Mr. Anil Mittal Driver (HTV)	Flat No.202	Type-I	Type-III	28.05.2014
5.	Ms. Benu Nath, LDC	Flat No.302	Type-II	Type-III	08.12.2017
6.	Mr. Dev Ranjan, ALIO	Flat No.204	Type-III	Type-III	09.06.2014
7.	Mr. Anand, MTS	Flat No.01	Essential (Type-I)	Type-I	15.03.2016

Copy of OM dated 13th October, 2003:

“Subject: Recovery of licence fee from Government employees who are offered and allotted Government accommodation higher than their entitlement.



The issue regarding the quantum of licence fee to be recovered from Government employees who are allotted Government accommodation higher than their entitlement has been reconsidered. It has been decided that in all cases where due to adequate availability of quarters of a particular type, a Government employee is allotted accommodation of a type which is higher than his entitlement, only flat rate of licence fee relevant to that type of accommodation is to be charged from such allottee. However, three times the normal rate of licence fee is to be charged from those Government employees who are allotted, out-of-turn, Government accommodation of a type higher than their entitlement at their own request, despite there being no surplus quarters in that type.

2. This supersedes the Directorates' OMs of even no, dated 21.04.03 and 14.07.03.

3. This order is to be implemented w.e.f. 21.04.03."

Copy of OM dated 28th October, 2010:

No.12035/11/97-Policy-II (Pt.)
Ministry of Urban Deployment
Directorate of Estates
Nirman Bhawan
New Delhi

Dated 28.10.2010

Office Memorandum

Subject: - Charging of enhanced rate of licence fee in case of out of turn Allotment.

The undersigned is directed to say that the matter of charging of three time of licence fee in case of out turn allotment till the day the allottee becomes eligible for in-turn allotment of a Govt. residence has been reviewed and it has been decided to propose enhanced rate of six times of licence fee in all the cases of all out of turn allotment through CCA from the date of occupation of Govt. residence till the day allottee's turn matures as per his seniority/priority in waiting list for allotment of that type of Govt. residence.

All allotment Sections are requested to submit the proposal for out of turn allotment at six times of licence fee for consideration of CCA.

(R.N. Yadav)
Deputy Director of Estates (Policy)

Copy of OM dated 12th January, 2012



No. 12035/11/97-Policy-II (pt)
Ministry of Urban Development
Directorate of Estates

Nirman Bhawan, Delhi Delhi
Dated 12/01/2012

OFFICE MEMORANDUM

Sub: Charging of enhanced Rate of Licence fee in case of Out of Turn Allotment.

The undersigned is directed to refer to this office O.M. of even No. dated 28/10/2010 on the subject noted above and to say that the matter of charging six times of normal licence fee in cases of Out of Turn Allotment till the day the allottee becomes eligible for in-turn allotment of Govt. residence, has been reviewed and it has been decided to propose three times of normal licence fee in all CCA Notes for out of turn allotment from the date of occupation of Govt. residence till the day allottee's turn matures as per his/her seniority/ priority in waiting list for allotment of that type of Govt. accommodation.

All allotment Sections are requested to submit proposals for out of turn allotment at three times of normal licence fee for consideration of CCA with immediate effect.

This issue with the approval of UDM.

(R. N. Yadav)
Deputy Director (Policy)

3. The Petitioners argue that the aforementioned OMs can be applied only when there is “out of turn allotment”, i.e. wherein an accommodation of higher entitlement was allotted at the specific request of the Government servant on medical or functional grounds. They emphasise that the higher allotment was on account of non-availability of their entitled accommodation and surplus availability of higher accommodation. Therefore, only normal license fee is applicable, and the demand for three times the normal license fee is untenable and arbitrary.

4. Ms. Harshita Nathrani, counsel for Respondent No. 2, argues that the demand for the higher category license fee is founded on the instructions as per the aforementioned OMs as well as the objection raised in the audit report. Accordingly, she submits that since the Petitioners were provided higher



category accommodation, there must be three times the normal rates. Additionally, she states that Respondent No. 2 has decided to rely on the stand taken by Respondent No. 1. In this regard, reliance is placed on a communication dated 23rd November, 2022, copy whereof has been handed over across the board and is taken on record.

5. Respondent No. 1, in their counter affidavit, has narrated the relevant facts and explained to the Court that the action for demand of higher license fee was taken pursuant to the directions of Respondent No. 2. They further point out that they had, in fact, through communication dated 27th July, 2021, pointed out to Respondent No. 2 that the OM of 2003, was not applicable and accordingly, Paragraph No. 1 of the audit report for the year 2018-19 ought to be dropped. However, such a request was not acceptable to Respondent No. 2.

6. The Court has carefully perused the record as well as the documents annexed with the petition and the counter affidavit of Respondent No. 1. The OM of 2003 provides that three times of the flat rate of license fee can be charged from Government servants who are allotted accommodation of a type higher than their entitlement on their own request. However, the situation before the Court is entirely different. In the instant case, the allotments to the Petitioners of accommodation higher than their entitlement was not on their request, but rather, due to non-availability of accommodations of their grade, as expressly stated in the letters of allotment of staff quarters issued to the Petitioners. Since, Type-I and Type-II accommodations were not available with Delhi Judicial Academy, they had to shift to the National Law University Complex in the year 2014 and all the allotments of available quarters were made subsequent to the issuance of



OM of 2003, which came into effect on 21st April, 2003. Thus, it emerges that none of the Petitioners had actually requested/ applied for the allotment of accommodation/ staff quarters of a category higher than their entitlement. In such circumstances, the Court is of the opinion that the OM of 2003, which forms the basis of the objection in Paragraph No. 1 of the audit report for the year 2018-19, does not apply to the Petitioners.

7. In fact, it must also be noted that the Respondent No. 1 was also of the same opinion, as expressed to Respondent No. 2 through letter dated 27th October, 2021. However, Respondent No. 2 has not agreed with such an interpretation. Be that as it may, in the opinion of the Court, the impugned notices for recovery of higher fees based on the audit report which in turn relies on the OM of 2003, cannot sustained and are accordingly are quashed.

8. If any recoveries of license fee have been reflected under the impugned notice, the same shall be refunded or adjusted from their dues. It is, however, made clear that the Petitioners shall be liable to pay the license fee commensurate with their entitlement of their allotment.

9. With the above directions, the present petition is disposed of accordingly along with pending applications.

SANJEEV NARULA, J

AUGUST 2, 2024
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