

12

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.2088/2002

New Delhi this the 26th day of February, 2003.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

1. Shri Madan Mohan Khantwal,
Son of Shri J.P. Khantwal,
working as L.D.C. in
O/o The D.G. Signals,
G.S. Branch, Chief Administrative Officer,
Ministry of Defence,
C-II Hutments, Dalhousie Road,
New Delhi-1
2. Shri J.P. Khantwal,
Retired as Cash Overseer from
Office of the Chief Post Master,
Delhi Circle,
Meghdoot Bhawan, Pusa Road, New Delhi
Both Residents of D-22,
Moti Bagh-I, New Delhi ... Applicants

(By Shri B. Krishan, Advocate)

vs.

1. Union of India, through the
Director of Estates,
Directorate of Estates
4th Floor, 'C' Wing,
Nirman Bhavan, New Delhi.
2. The Chief Post Master General,
Department of Posts,
Government of India
Delhi Circle, Meghdoot Bhawan,
Pusa Road, New Delhi-1.
3. The Senior Post Master
Office of the Senior Post Master,
Sarojini Nagar Head Post Office,
New Delhi-23 Respondents

(By Shri R.N. Singh & Shri R.P. Aggarwal, Advocates)

O R D E R

Justice V.S. Aggarwal:-

Applicant No.2 is the father of applicant
No.1. The allotment of premises D-22, Moti Bagh-I,

ls Ag

New Delhi, had been made in the name of applicant No.2 while he was working in the office of the Chief Post Master General, Delhi Circle, New Delhi. He retired on 30.11.2001 while working as a Cash Overseer in the office of the Senior Post Master, Sarojini Nagar Head Post Office. As a result thereto, the allotment in his favour is deemed to have been cancelled. Applicant No.1 is working in the Central Government service since 3.7.1995 and is posted as a Lower Divisional Clerk in the office of the Director General Signals, Chief Administrative Officer, Ministry of Defence, New Delhi.

2. By virtue of the present application, they seek allotment of an alternative accommodation of Type 'B' from the General Pool in the name of applicant No.1 and to allow the applicants to continue to reside in the aforesaid premises. It is asserted that the applicant No.1 has not been drawing any House Rent Allowance since 1.8.1996. He is entitled to Type 'B' accommodation and is also an employee of the Central Government eligible for the said allotment. In this regard, reliance is being placed on a number of instances wherein this Tribunal had allowed the said prayer.

3. The application has been contested.

LS Ag

Respondents 2 and 3 in their separate reply stated that applicant No.2 has retired and on his retirement, the allotment of the quarters stood cancelled. The retention was only allowed upto 31.7.2002. Applicant No.1 is an employee of the Ministry of Defence and request of regularisation of the accommodation is in his favour. This request cannot be considered because it involves inter-pool exchange of quarters. There is no proposal received from the Ministry of Defence for exchange of one Defence Pool quarter with the Postal Pool quarter because applicant No.2 was an employee of the Postal Department.

4. Respondent No.1 has filed a separate reply and took up the plea that this Tribunal has no jurisdiction to entertain the application. It was pleaded that though applicant No.1 is eligible for allotment of General Pool accommodation provided he fulfils all other conditions for such regularisation but applicant No.2 was working in the Postal Department and he was not having any General Pool accommodation.

5. The first and foremost question that comes up for consideration during the course of submissions is as to whether this Tribunal has the jurisdiction to entertain the said application or not. The learned counsel for the applicant had

LS Ag e

drawn our attention to certain Single Bench decisions of this Tribunal in which when somewhat similar question arose, the similar prayer had been granted. In the case of **Dr.A.Golmai and Another v. Union of India and Another** in OA No.1249/1991 decided on 4.9.1992 when a similar situation had arisen, this Tribunal held that relief claimed deserves to be awarded and a direction was issued that the allotment of the Government residence should be regularised in the name of applicant No.1 on payment of usual licence fee. Similar view had been taken in the case of **Milap Chand vs. Union of India and Ors**, in OA No.1859/2001 decided on 21.5.2002, as also in the case of **Dinesh Kunmar Sharma v. The Secretary, Land & Building Department and another** in OA No.818/1996 decided on 20.2.1998 besides the case of **Shri Shanti Prashad Pant v. Union of India and another** in OA No.77/2001 decided on 10.1.2001.

6. However, in all the decisions of this Tribunal, the question of jurisdiction of this Tribunal had not been the subject matter of controversy. Section 3(q) of the Administrative Tribunals Act, 1985 refers to the definition of "service matters" in the following words:-

"Service matters", in relation to a person, means all matters relating to the conditions of his service in connection

LS Ag

-5-

with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or as the case may be, of any corporation [or society] owned or controlled by the Government, as respects-

- (i) remuneration (including allowances), pension and other retirement benefits;
- (ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;
- (iii) leave of any kind;
- (iv) disciplinary matters; or
- (v) any other matter whatsoever;

In terms of Section 14 of the Administrative Tribunals Act, 1985, this Tribunal has the jurisdiction, power and authority to deal with "service matters" of the service with which are presently concerned.

7. It becomes unnecessary for us to ponder further in this regard as to whether this would a service matter or not because this question had come up for consideration before a Division Bench of the Delhi High Court in the case of Smt. Babli and another vs. Govt. of NCT of Delhi and others, 95 (2002) Delhi Law Times 144 (DB). Therein the Government accommodation had been allotted to a person who had died. The legal representatives were asking for regularisation of the allotment in their names or fresh allotment. When their request was rejected, they preferred an application in this

LS Ag

Tribunal. One of the questions considered by the Delhi High Court was as to whether this would be service matter or not. The Allotment of Government Residences (General Pool in Delhi) Rules of 1963 were considered. The Delhi High Court had held that any such type of question would not be a service matter and in para 5 gave the following findings:-

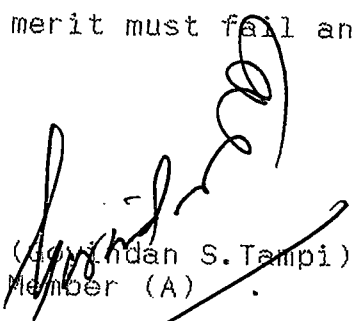
A "5. It must be clarified at the very outset that claim to allotment of Government residential accommodation does not become condition of service unless the relevant Service Rules provide so. No such rule was shown or pressed in service in the present case which provided for petitioners entitlement to residential accommodation. The expression "any other matter" occurring in Sub-clause V could not be also interpreted so liberally and loosely as to include any matter whatsoever whether or not it was related to employees service condition. The words "any matter" would be read esjuda generis and in the context of provisions of Rule 3(Q). Otherwise any contrary interpretation placed on it would lead to absurd results and would make Tribunal a Forum for all matters including private matters of an employee. That indeed cannot be the intent and purpose of this Rule which defines the service matters for purposes of giving jurisdiction to Tribunal. An employee's non-charging of HRA would be inconsequential in this regard and would not convert his claim for residential accommodation to service condition." A

Some feeble arguments were advanced to challenge the correctness of the aforesaid decision of the Delhi High Court but the same necessarily must be rejected. Keeping in view the ratio deci dendi of

LSAg e


the decision indeed, the only conclusion that we can arrive at is that this Tribunal does not have the jurisdiction to deal with the matter.

8. Resultantly, the application being without merit must fail and is dismissed. No costs.



(Govindan S. Tampi)
Member (A)

/sns/



(V.S. Aggarwal)
Chairman