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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

RA No.344/2001 in  
OA No.725/2001

New Delhi this the 16th day of May, 2002.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Union of India through  
the Secretary to the  
Govt. of India,  
Ministry of Communications,  
Department of Posts,  
New Delhi-110001.

-Review Applicant

(By Advocate Shri H.K. Gangwani)

-Versus-

Smt. Usha Gursahany,  
W/o late Shri Ghanshyam Gursahany,  
Stamp Vendor in Chanakyapuri Post Office,  
New Delhi-110021.

-Respondent

(By Advocate Shri Sant Lal)

O R D E R (Oral)

This RA is filed by the respondents directed against an order passed by this court on 6.9.2001 in OA-725/2001, wherein the following directions have been issued:

"It would be in the interest of justice to direct the respondents to recover from the applicant Licence Fee double the normal w.e.f. 1.8.1992 till the request of the applicant for regularisation of Govt. accommodation is considered in accordance with the rules and instructions. While doing so, the respondents may also consider the payment already paid by the applicant and take a final decision regarding regularisation of accommodation within four weeks from the date of receipt of a copy of this order. Till then the applicant would be allowed to stay in the Govt. quarter. It is also made clear that this decision would not be treated as a precedent."

2. Learned counsel Shri H.K. Gangwani, appearing for the review applicant has taken the following grounds in support of his RA:

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- i) the order suffers from jurisdictional error and legal infirmity inasmuch as in view of

the eviction proceedings initiated against the applicant by the Estate Officer under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as P.P. Act.) and having regard to the decision of the Apex Court in Union of India v. Raseela Ram, CA-1301-04/90 within the service matters defined in Section 3 (q) Tribunal is not conferred with the jurisdiction to go into the legality of the order passed by the competent authority under the aforesaid Act.

ii) The Tribunal has exceeded the jurisdiction by directing the respondents to recover only double the licence fee w.e.f. 1.8.92 as the aforesaid function is the prerogative of the Executive and the quantum of licence fee is to be decided in accordance with the rules and instructions.

iii) There is an error apparent on the face of record while directions have been issued to allow the applicant to stay in the Government quarter till his request for regularisation of accommodation is disposed of.

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- iv) By holding that the decision would not be treated as a precedent the court has acted without jurisdiction and such jurisdiction is vested only with the Apex Court under Article 142 of the Constitution.
- v) Reliance on an earlier decision of the Tribunal in OA-641/97, which is contrary to the decision of the Apex Court in Raseela Ram's case (supra) is not correct.

3. Learned counsel stated that once the eviction proceedings are initiated by the Estate Officer under the P.P. Act, 1971 any consequent orders whether of eviction or of damages are to be gone into by the Estate Officer and further the appeal lies to the Additional District Judge as per Rule 9 of the Act *ibid*. This Tribunal has acted without jurisdiction and the decision is *per incuriam* of Raseela Ram's case (supra). As the error is apparent on the face of it the order is *de hors* the decision of the Apex Court and is liable to be reviewed.

4. On the other hand, respondent's counsel Shri Sant Lal took a preliminary objection as to the maintainability of this RA by resorting to Rule 17 (5) of the Central Administrative Tribunal (Procedure) Rules, 1987 inasmuch as it is contended that for maintainability of the RA it is mandatory that the review application shall be supported by a duly sworn affidavit, indicating therein the source of knowledge, personal or otherwise and also those which are sworn on the basis of the legal advice. By referring to the affidavit filed alongwith the RA it is

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contended that the requirement of the aforesaid rule has not been met and there is nothing in the affidavit to indicate that the same has been filed and supported by the averments indicating source of knowledge of those who have sworn the affidavit. Mere reference to the official record and legal opinion tendered is not a compliance and it particularly deals with the contents of the affidavit but the contents of the RA are not deposed to be on the basis of either on record or knowledge of the deponent.

5. Shri Sant Lal further objected to the maintainability of the RA by stating that under Section 22 (3) (f) of the Administrative Tribunals Act, 1985 as well as Order 47, Rules (1) and (2) the essential condition to entertain the review and the scope is very limited if there exists an error apparent on the face of record or there has been a discovery of new material which otherwise even after due diligence could not be made available to the review applicants. In this backdrop it is stated that the objection regarding Raseela Ram's case (supra) is not well founded, as in the counter reply filed by the respondents/review applicant in OA and more particularly while replying to clause (2) regarding jurisdiction it has been clearly stated that the same needs no reply. Having failed to take that objection in the OA, respondents are restrained from taking the same now in the RA as it would amount to filling up the gaps and correcting their mistake by way of re-agitating the issue which can be permissible in an appeal against the order but not by way of RA. Apart from it, it is contended that the ratio in Raseela Ram's case (supra) would have no application in the facts and circumstances of the present case as what has been impugned

in the OA is not an order passed by the Estate Officer and further it is stated that under the P.P. Act under Section 9 appeal lies only to an order passed under Sections 5 and 7 of the Act. As the applicant in the OA has assailed the orders of the respondents wherein even after according compassionate appointment the accommodation was not regularised and rather she has been asked to vacate the quarter and deposit the dues and more particularly on the date of passing the order the proceedings under P.P. Act, 1971 were not initiated as apparent from Annexure A-1 of the OA, where it is clearly observed that if the applicant fails to vacate the quarter she shall be liable for an action under the P.P. Act, 1971. The grievance of the applicant and the relief were for quashing this order and regularisation of the Government accommodation which does not fall within the jurisdiction of Additional District Judge and cannot be re-agitated under the P.P. Act. This Court has jurisdiction to entertain the grievance and the RA is not well founded and is the misuse of the process of law. It is further stated that the review applicants are re-agitating the matter and attempt to re-argue it as the order in OA was dictated in the presence of the respondents' counsel. Their failure to point out towards any error now precludes them from raising the issue by way of this review. It is contended that howsoever may be the erroneous decision of the Tribunal the remedy lies by way of an appeal and not through the present RA. He placed reliance on a decision of the Apex Court in Ajit Kumar Rath v. State of Orissa & Ors., 2000 (1) SCSLJ 1 to substantiate the aforesaid plea. The Apex Court in this case while dealing with the case of a Tribunal clearly observed as follows:

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"the power of review available to the Tribunal is the same as has been given to a court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of person on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of record or for any other sufficient reason."

6. Further placing reliance on a decision of the Apex Court in Indermani Kirtipal v. The Union of India & Ors., 1996 (1) SCSLJ 462 it is contended that if a Bench consisting of Single Member has decided the case after considering it on merits the unsuccessful party is precluded from re-agitating the same on the ground that the Member had no jurisdiction to decide the issue. Further placing reliance on a decision of the Apex Court in Meera Bhanja v. Nirmala Kumari Choudhury, AIR 1995 SC 455 it is contended that the error apparent on the face of record means an error which strikes one on mere looking at record and would not require any long drawn process of reasoning on points where there may conceivably be two opinions. In this view of the matter it is contended that the right of review is not a right of appeal where all questions decided are open to challenge on the strength of the Apex Court decision in K. Ajit Babu & Ors. v. Union of India & Ors., 1998 (1) SLJ 85 (SC).

7. Having meticulously considered the rival contentions of the parties and on perusal of the record the present RA is liable to be dismissed on the preliminary objection and is not maintainable keeping in view of the provisions of Rule 17 of the Central Administrative

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Tribunal (Procedure) Rules, 1987. Aforesaid rule clearly stipulates that no review application shall be entertained unless the same is supported by a duly sworn affidavit indicating therein the source of knowledge, personal or otherwise, also those which are sworn on the basis of legal advice. Having perused the affidavit filed by the review applicants the aforesaid mandatory requirement is lacking. The affidavit is not complete. The source of knowledge has not been disclosed. Merely a reference to the official record is given in the verification which does not pertain to the review application but to the contents of the affidavit which is not a valid compliance of the aforesaid rules, rendering this RA no maintainable.

8. However going beyond this technicality I also proceed to consider the RA on merits. The respondents have attempted to re-argue the matter as if in an appeal which is not permissible in law. Their contention that there is an error apparent on the face of record is also not correct, as the alleged error is not an error which strikes one on mere looking at record and would not require any long drawn process of reasoning on points where there may conceivable be two opinions and cannot be treated as an error apparent on the face of record. However, I find that the applicant has impugned an order of imposing damages and a notice for vacation from Government accommodation issued on 5.12.2000 and admittedly the proceedings under P.P. Act, 1971 were yet to be initiated. As such the relief of the applicant is not directed against any order passed under Section 5 or 7 of the P.P. Act, as such his remedy for regularisation of the Government accommodation and to charge the normal licence fee is a service matter under

Section 3 (q) of the Administrative Tribunals Act, 1985 and is amenable to the jurisdiction of the Tribunal. As the applicants have not challenged any order passed on eviction or an order passed by the Estate Officer imposing damages, the order impugned having been passed by the Assistant Director, Postal Services, the same cannot be said to be an order under the P.P. Act, 1971, for which the Tribunal has no jurisdiction.

9. In so far as the contention that the order is per incuriam of Raseela Ram's case (supra) I find that in their reply to the OA they have not taken any objection nor at the time when the order was dictated no such objection was put forward by the respondents. Once the decision has been rendered, it is not open to the respondents by way of review to re-agitate the issue. In my considered view if the decision is erroneous the remedy lies by way of an appeal, challenging the Tribunal's order.

10. The other grounds raised by the respondents/review applicants are in the form of grounds in appeal to challenge the order, which cannot be gone into in a review, which has a limited scope of interference.

11. Having regard to the aforesaid decisions cited by the applicant (supra) and with regard to the discussion made, I do not find any merit in the RA. The same is accordingly dismissed, but without any order as to costs.

S. Raju

(Shanker Raju)  
Member (J)

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