

2
CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

60
14

OA NO. 1355/2001

New Delhi, this 1st day of March 2002

Hon'ble Shri Govindan S. Tampi, Member (A)

Sh B D Prasad,
S/o Lall Prasad,
50/2-B, Sector II DIZ Area,
New Delhi

.....Applicant

(By George Paracken and B S Maine Advocates)

VERSUS

1. Union of India
through its Secretary,
M/o Urban Development,
Nirman Bhawan, New Delhi
2. Director, Dte. of Estates,
Nirman Bhawan,
New Delhi.
3. Director Publications Division,
Patiala House Courts,
New Delhi

.....Respondents
(By Shri S.K. Gupta , Advocate)

Q U E R Y

In this OA, respondents' order dated 3.11.2000, cancelling the allotment of residential accommodation and those dated 22.11.2000 as well as 9.5.2001, demanding amounts of rent at higher rates, are under challenge.

2. Heard S/Shri George Paracken and B.S. Maine, who appeared for the applicant and Sh. S K Gupta who represented the respondents.

3. Applicant, an Asstt. Business Manager, in Publication Division, Delhi was allotted a type III residential area in Kali Bari Marg New Delhi. On being advised by the applicant's employers on 14.8.2000, that he had

2

been transferred to Batton, Estate Officer cancelled the allotment on 3.11.2000, but with retrospective from 13.12.98. It was followed by the letter dated 22.11.2000, demanding Rs.85,291/- towards market rent/damages for overstay from 13.12.98 to 30.11.2000. Applicant had been transferred along with ??the post of Asstt. Business Manager on 1.9.98, to Patna, where he joined on 30.10.98. He was declared eligible to draw TA/DA. He also continued to draw pay and allowances from Delhi as the posting to Patna was a stop-gap arrangement. He was brought back to Delhi shortly thereafter i.e. on 22.7.99. During his stay at Patna, he was not given any HRA and licence ^{fee} was being recovered from him for the residential accomodation at Delhi where his dependant mother and younger sister were staying. His headquarters had been shifted only for a period of ten?? months and four days i.e. 30.10.98 to 3.9.99. As in terms of Estate Office OM No. 12035/21/95-Pol II dated 31.7.2000, an officer who is reposted within four months beyond the permissible period of eight months, could get the allotment regularised by paying double the licence fee, the applicant sought regularisation by his representation dated 16.3.2000. Instead of regularising the above the respondents by their letter dated 30.4.2001, increased the rent to Rs. 1,03,441/-. Hence this OA.

4. Grounds raised in this OA are as below:-

- i) applicant's posting to Patna was only a stop-gap arrangement for ten months and he was in effect an employee at Delhi,
- ii) applicant's posting at Patna was for ten months much less than 12 months permitted in the case of transfer and reposting,
- iii) applicant deserves to be treated as having an uninterrupted stay or at worst deserved to have the allotment regularised on payment of licence fee as admissible.

5. In view of the above the applicant calls for the quashing of the cancellation order dated 3.11.2000, and the demands for damage rent dated 22.11.2000 as well as 9.5.2001.

6. Respondents point out that as the applicant, who was allotted the residential quarters on 18.4.96, was transferred to Patna on 13.10.98 and reposted to Delhi on 14.9.99. Therefore, his allotment was cancelled on 3.11.2000, but w.e.f. 13.12.98, after permitting two month's period . As the applicant had overstayed in the premises, eviction proceedings had to be initiated. His request for regularisation could not be considered, keeping in mind his date of priority. His request for consideration of his case under Estate Office letter No. 12035/21/95/Pol II dated 13.7.2000 could not be considered, as the orders were only prospective and could not cover his case. His case was covered by the earlier letter No. 12035/21/95-Pol dated 4.12.95, according to which regularisation on reposting even on payment of damage rent is possible only after the date of priority gets covered for the allotted accommodation, which was 2.1.69, and in the case of the applicant was 13.1.84. Respondents aver that as the applicant had overstayed in the accommodation, action had to be initiated for the cancellation of the allotment as well as recovery of damages rent. Respondents have only acted as was expected of them in law and the same cannot be assailed, according to them.

7. During the oral submission learned counsel for both the parties reiterated their pleas . According to S/Shri Paracken and Maine the action of the respondent was incorrect, as the applicant was throughout posted in Delhi, with the Headquarters alone being shifted to Patna for a period of ten months. The applicant was never in receipt of

HRA in Patna and licence fee was being recovered from him at Delhi where he was drawing the pay. He should therefore be treated as only working in Delhi. At worst, if he was treated as working in Patna on exigencies of service, his case fell within the purview of the letter dated 31.7.2000, which permitted regularisation in cases of transfers and reposting. On the other hand, it is pointed out by the respondents that the Estate Officer, has already initiated the proceedings for eviction of the premises, in terms of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and, therefore, the jurisdiction of the Tribunal is ousted in terms of the Hon'ble Supreme Court's decision in the case of Union of India Vs. Rasila Ram (JT 2000 (10) 503), as the issue relating to eviction of residential accommodation was not a service matter. This is disputed by the applicant, holding that they were basically challenging the order of cancellation of the accommodation and procedure to recover damage rent, till such time an individual is declared to be an unauthorised occupant of the certain premises, decision in Raseela Ram's case does not come into play. He also refers to a few decisions of the Tribunal including the Full Bench decision dated 13-2-1991, in OA No.184/90 and others in support of his contention that the matter was within jurisdiction of the Tribunal.

8. I have carefully considered the matter. Facts are not in dispute in this cases. The applicant who was transferred from Delhi to Patna, along with the post he was serving in and reposted after ten months and three days, challenges the orders of retrospective cancellation of the accommodation, which he had retained in Delhi, as well as demands for recovery of damages holding his overstay as unauthorised and urges that his case is covered by the

Directorate's orders of 31-7-2000, providing for regularisation of quarters in cases of reporting to the same station, within 12 months. On the other hand, the respondents point out that their action was legal and proper and that this being a matter in which proceedings under PP (EOU) Act, 1971, have been initiated, Tribunal's jurisdiction is ousted.

In this matter, as the jurisdiction of the Tribunal itself is under challenge, one has to deal with the issue, before the other contentions can be considered. While the respondents urge that with the decision of the Hon'ble Supreme Court in Raseela Ram's case (supra) the Tribunal cannot adjudicate matters falling within the purview of PP (EOU) Act, 1971, according to the applicant, till such time proceedings are complete under the said Act, the Tribunal has jurisdiction, more so as he was only challenging the cancellation of the accommodation and demand for damages. He also relies upon the decision of the Full Bench of the Tribunal dated 13-2-1991 in the case of Gangaram and anr., OA No.184/90, given after the stay granted against Tribunal's earlier decision, which held that unless the earlier decisions of the Tribunal is set aside, reversed or modified by the Hon'ble Supreme Court, it held the field. The same has been followed by the Tribunal on 23-5-1996, OA No.669/96, filed by Smt. Sheela. The Tribunal, had also sought to differentiate the issue settled by the Hon'ble Apex Court in LIC of India Vs. Shiv prasad Tripathi & Ors (JT 1996 (2) SC 713). The fact, however, is that the Hon'ble Apex Court has given its final verdict in Raseela Ram's case, holding that the Tribunal's jurisdiction in matters relating to eviction of accommodation was ousted as it was not a service matter and fell within the purview of the Courts. S/Shri Paracken and *Kw*

Mainee, for the applicants have argued that the ratio of Raseela Ram would come into play only when eviction proceedings under PP (EOU) Act are completed and not before which was the position in this case. One is not certain that such a fine line of demarkation can be drawn, as the cancellation order dated 3-11-2000 makes it evident that the same was prelude to proceedings under the said Act. It is also seen that three notices under PP (EOU) Act have been already issued on 23-1-2001, 19-4-2001 and 31-10-2001, showing that the proceedings are on. Besides the Hon'ble Delhi High Court has, in their recent judgement dated 31-8-2001 in Smt. Babli & Anr. Vs. Govt. of NCT of Delhi & Ors. [95 (2002) DELHI LAW TIMES 144 (DB)] has directed that allocation/cancellation of residential accomodation also was not in the jurisdiction of the Tribunal Paras. The above decision reads as under :-

"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 accomodation. 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 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 deed 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.

6. As regards pool Rules, they only regulate the allotment of Government accommodation and do not confer any right as such on an employee to claim it.

7. All this notwithstanding, we find that Tribunal had held petitioners OAs not maintainable upon reliance on the Supreme Court Judgement in Rasila Ram case (supra) which laid down:

"Once a government servant is held to be in occupation of a public premises as an unauthorised occupant within the meaning of Eviction Act, and

appropriate orders are passed thereunder, the remedy to such occupants lies as provided under the said act. By no stretch of imagination the expression any other matter in Section 13(q) (v) of the Administrative Tribunal Act would confer jurisdiction on the Tribunal to go into the legality of the order passed by the Competent Authority under the provisions of the PPE Act, 1971. In this view of the matter, the impugned assumption of jurisdiction by the Tribunal over an order passed by the Competent Authority under the Eviction Act must be held to be invalid and without jurisdiction. This order of the Tribunal accordingly stands set aside.

8. We have gone through that judgement which proceeds on the premises that once eviction action was initiated for his unauthorised occupation of premises under the relevant Act, Tribunal could not assume jurisdiction in the matter by reference to Section 3(Q)(V) by treating it as "any other matter". That conclusively settles the issue once for all and it need be hardly expressed that law laid down by Supreme Court was binding on all including Tribunal and therefore its impugned orders could not be faulted for that. This is so for the added reason that Eviction Act provided its own safeguards and remedies and where an employee felt aggrieved of any orders passed under this Act, he was to seek appropriate remedy provided therein instead of approaching the Tribunal with his grievance in this regard.

9. In the present case also eviction proceedings stood initiated against petitioner who had all the options to avail of the safeguards and remedies provided under the relevant Act. The question of Tribunal assuming jurisdiction therefore did not arise.

10. We, accordingly, hold that CAT had no jurisdiction to entertain OAs claiming allotment or regularisation of Government accommodation unless such claim was shown to be a condition of service. Nor could it assume jurisdiction where eviction action was taken against an employee for his alleged unauthorised occupation of the premises under the Eviction Act. These petitions are accordingly dismissed and Tribunal order affirmed."

It is evident therefore that the matter under challenge in this OA, being related to cancellation of accommodation, as a prelude to eviction, is outside the jurisdiction of this Tribunal. It would not therefore be proper for me to record any findings on the merits of the case.

(91)

-8-

8. In the above view of the matter, I am not convinced that the applicant has made out a case to show that this matter is within the Tribunal's jurisdiction. OA is therefore dismissed, as being beyond the jurisdiction, with liberty to the applicant to approach the appropriate forum for redressal of his grievance. Needless to say the applicant's case would not be hit by limitation before such forum, as the applicant's case is being repelled at this end only on the ground of jurisdiction. *NeCob*

2

Govindan S. Tamai
(Govindan S. Tamai)
Member (A)

Patwal/