

Central Adminisrative Tribunal  
Principal Bench

O.A.No.2588/2001  
M.A.No.1343/2002

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Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 22<sup>nd</sup> day of August, 2002

Dr. B.K.Jha  
s/o Sh. Nunu Kha  
r/o E-158, Nanak Pura  
New Delhi - 110 021.  
working as Medical Officer  
Directorate of Health Services  
GNCT of Delhi. .... Applicant

(By Advocate: Shri S.K.Sinha)

Vs.

1. The Director of Estates  
Directorate of Estates  
Government of India  
Nirman Bhawan  
New Delhi.
2. Asstt. Director of Estates  
Government of India  
Directorate of Estates  
Nirman Bhawan  
New Delhi.
3. Director of Health Services  
Government of NCT of Delhi  
Karkar Dooma  
Shahdra  
Delhi. .... Respondents

(By Advocate: Ms. Meenu Mainee)

O R D E R

By Shri Shanker Raju, M(J):

Heard both the learned counsel.

2. Applicant impugns respondents' order dated 3.8.2001 where his request for regularisation of quarter No.E-158, Nanakpura, after the retirement of his father was rejected. He has sought quashment of the same and regularisation with all consequential benefits. By an order dated 16.10.2001 statusquo with regard to the accommodation was ordered by the Court which has continued from time to time.

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3. Applicant was appointed as Medical Officer on 24.10.1996 on contract basis in the Directorate of Health Service, Govt. of NCT, before that he his father Shri Nunu Jha, who was an officer with the Cabinet Secretariate, was allotted the aforesaid accommodation from general pool. Applicant had also not claimed any HRA while staying with his father.

4. Father of the applicant retired on superannuation on 31.1.2001 and after the permissible period of four months the allotment of the Government quarter was cancelled, in his name w.e.f. 1.6.2001. Applicant requested the respondents for ad hoc allotment/regularisation of Government accommodation but the same was rejected on 3.8.2001 by applying OM dated 27.12.1991, giving rise to the present OA.

5. Learned counsel for applicant contended that the decision of the respondents that the applicant was not employed as regular employee under the Delhi Administration hence he is not entitled to allotment, cannot be countenanced in view of the communication of the Principal, Sister Nivedita Govt. Sarvodaya Vidyalaya where it has been certified that the applicant is working as Medical Officer in the School.

6. Learned counsel for applicant contended that earlier he approached this Tribunal in OA 556/2000 wherein in CP 131/2001 decided on 17.7.2001, where the applicant was one of the party, applicant

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has been made entitled for grant of pay and allowances and other service benefits as are admissible to a regularly appointed Medical Officer on the corresponding pay scale which interalia includes allotment of Government accommodation.

7. Learned counsel for applicant further contended that in view of the OM dated 16.7.1981, under SR 317(B)(25) of the Allotment of Govt. Residences (General Pool in Delhi) Rules, 1963, allotment is permissible from the general pool to contract officers who appointed in the pay scale of Rs.3000 and more as per their entitlement. Rejection of the case of the applicant subsequently on the ground that ad hoc allotment is not permissible to a person working on contract basis and stand taken by the respondents, cannot be entertained as there has been a discrepancy and conflict the reasoning and whatever has been stated to deny applicant ad hoc allotment in the impugned order cannot be substituted by the subsequent reasoning in the reply and what has been contained in the impugned order has shall have to be treated as the grounds. Placing reliance in M.S.Gill Vs. Chief Election Commissioner, 1978(1) SCC 405, it is contended that the subsequent reasons outside the impugned order is to be excluded.

8. Learned counsel for applicant has made an alternative plea that the respondents should charge normal licence fee from the applicant as he is entitled for drawing of HRA, not being eligible to be allotted the Government accommodation. Applicant's

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counsel has also filed MA 1343/2002 to incorporate a challenge to the order passed by the respondents on 12.12.2001.

9.. On the other hand, respondents' counsel Ms. Meenu Mainee, denied the contentions and stated that as per the conditions for approval of HRA on the same analogy as of Government servant if the accommodation was allotted to a father has been shared by the applicant, the applicant is not entitled to draw HRA.

10. Moreover, it is contended that after the permissible period, the allotment of Government accommodating has been cancelled in the name of father of the applicant and has no regularisation of ad hoc allotment is permissible in contract cases, the same is not allowed. By referring to OM 16.7.1981, it is stated that the ad hoc allotment is to be resorted from general pool only in respect of contract officers who have been brought in Government from outside but not as members of any organised service and who were appointed at the pay of Rs.3000 and more which was the maximum under the Third Pay Commission. As the applicant is in the scale of Rs.8000-13500 which is not the maximum to the pay scale, he is not eligible. It is further stated that by referring to the decision of High Court in Smt. Babli & Anr. v. Govt. of NCT of Delhi & Ors., 95(2002) DLT 144 (DB) regularisation or fresh allotment of premises and if the action is taken for unauthorised occupation under the Public Premises Act, 1971 and in absence of any rule, to provide entitlement to a residential accommodation in

view of the decision of the Apex Court in Rasila Ram's case, this Tribunal has no jurisdiction to entertain the OA.

10. On merits as well, it is stated that the applicant is not a regular Government servant and being appointed temporarily on contract basis, he is not eligible for regularisation of general pool accommodation. As the applicant does not fulfil the conditions of eligibility he is not entitled for allotment of Govt. accommodation.

11. In rejoinder, applicant reiterated his pleas by referring to OM 20.5.1999, it is contended that keeping in view of the hardship and dislocation being faced, with the approval of competent authority, one is to be allotted government accommodation on payment of normal licence fee and further regularisation in the event of retirement of allottee, and the pay scale drawn by the applicant is very much brought within the purview of the OM.

12. I have carefully considered the rival contentions of both the parties and perused the material on record.

13. In my considered view, the request of the applicant for amendment and incorporation of challenge to the impugned order passed on 12.12.2001 where the request of the applicant is rejected, for ad hoc allotment, need not be allowed as this would amount to empty formality, the case can be disposed of even on the basis of existing material on record.

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14. In so far as the contention of the applicant for allotment, and his eligibility as contract employee, and on the basis of OM dated 16.7.1981 is concerned, I am of the considered view that though only a regular employee is entitled for allotment and regularisation of Govt. accommodation from the general pool but an exception has been made on the basis of SR 317(B)(25) where contract officers have been allowed to avail the benefits subject to the condition that they should have been brought in Government service from outside but not as members of any organised service and for the limited period, on specialised assignments under which tenure further subjected to drawing of pay of Rs.3000/- and more and this is in the context of pay scales which were maximum under the Third Pay Commission on 16.7.1981. Nothing has been brought on record that the aforesaid memorandum has been modified. Moreover, applicant's case does not fall within the ambit of this OM, as the applicant has not been brought on for a specialised assignment and is not drawing maximum of the pay scale, he is not entitled for as contract employee, for allotment of Government accommodation or its regularisation.

15. Moreover, the respondents have now started proceedings and are proposing to recover the penal rent under the provisions of P.P.Act, 1971 and in view of this, this court has no jurisdiction to deal with the case.

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16. Moreover, although the Tribunal has directed in CP supra for accord of service benefits to the applicant at par with those regularly medical officers, but yet allotment of accommodation is not being a condition of service but a concession. This has not been demonstrated that similar circumstance contract Medical Officers had been allotted Government accommodation to bring the case of the applicant within the ambit of Articles 14 and 16 of the Constitution of India.

17. In so far as the OM dated 20.5.1999 is concerned, the same does not apply to the case of a contract employee like the applicant as such no benefits can be <sup>claimed</sup> ~~claimed~~ by the applicant on this count.

18. In the result, I do not find any infirmity on the action of the respondents, OA is found bereft of merit and is accordingly dismissed. Interim order already granted shall stands vacated. No costs.

  
(Shanker Raju)  
Member (J)

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