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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.2466/99

New Delhi, this the 16th day of February, 2001

HON'BLE SHRI S.A.T. RIZVI, MEMBER (A)

Shri A.Chaudhary,
Q-6-3, Sector-XIII,
R.K.Puram, New Delhi-66.

..Applicant.

(By Advocate: Shri R.P.Kapoor)

VERSUS

1. Union of India,
Ministry of Urban Affairs & Development,
through its Secretary, Nirman Bhawan,
New Delhi-1.
2. The Director of Estate,
Directorate of Estate,
Nirman Bhawan, New Delhi-1.
3. The Estate Officer,
Directorate of Estates,
Nirman Bhawan, New Delhi-1.
4. Director of Estates-I,
Ministry of U.A. & Employment,
C-Wing, Nirman Bhawan, New Delhi-1.

..Respondents

(By Advocate: Shri Rajinder Nischal with
Shri Vinod Kumar)

O R D E R

This is second round of litigation in the same case relating to the applicant. Earlier he had filed another OA-1295/97 which was decided by the Principal Bench of this Tribunal on 11.8.1997.

2. In order to appreciate the facts and the circumstances of the present OA, it is necessary to dwell at some length on the facts and circumstances revealed in the aforesaid previous OA.

3. The Hon'ble Supreme Court, it seems, had ordered detailed investigations into certain complaints regarding

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large scale irregularities committed in the allotment of Govt. quarters/residences by contravening the supplementary rules dealing with such allotments. After a number of hearings, the Supreme Court finally decided the matter by its judgement dated 23.12.96. As a result, a large number of Central Govt. servants who had secured allotments on out of turn basis on special compassionate grounds, were required to vacate the residences occupied by them and/or to pay enhanced licence fee for the period of occupation of residences in contravention of the rules. In some cases, out of the above, the allottee officers could continue to occupy the residences but this was made subject to fulfilment of certain conditions. In other cases, the allottee officers were required to vacate in any case. The aforesaid judgement of the Supreme Court was followed by a Central Ordinance dated 21.6.97 which sought to regularise the out of turn allotments. The aforesaid Ordinance made it possible for practically all the allottee officers to continue living in the residences occupied by them but laid down certain conditions with regard to the payment of enhanced licence fee etc.

4. The applicant initially fell in the category of those officers who were required to vacate the residence as well as to pay enhanced licence fee etc. from the date of occupation upto the date of vacation. The conditions for vacation having been set aside by the aforesaid Ordinance, the applicant is now required to pay enhanced licence fee etc. and is permitted to continue to reside in the allotted accommodation. The applicant

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had impugned the notice dated 17.3.97 by which he was, before the aforesaid ordinance was issued, required to vacate the accommodation as well as to pay enhanced licence fee etc. It would seem that this Tribunal while considering the aforesaid previous OA, found itself in agreement with the contention raised by the applicant (in that OA) that the date-of-priority (hereinafter called 'DOP') in respect of the applicant had been wrongly considered by the respondents. The Tribunal, therefore, decided as follows:-

"2. It was also stated that the date of priority has been wrongly considered by the respondents. The respondents shall not evict the petitioners on that ground until they decide the date of priority in accordance with the submissions made by the petitioners in this OA. The petitioners are given a liberty to make representation in this regard within 15 days from today and thereafter, the respondents shall dispose of the representations and no action against the petitioners be resorted to until the said representations are disposed of." (emphasis supplied by me)

5. In accordance with the liberty granted by the Tribunal as above, the applicant did file a representation on 21.8.97. However, without considering the same and also without properly considering the submissions made by him in that OA, to which a pointed reference was made by the Tribunal, the respondents issued another letter dated 10.9.98 (Annexure A-8) by which the respondents ordered the recovery of enhanced licence fee from the applicant. The applicant accordingly filed a Contempt Petition, being CP No.8/99 in OA-1295/97, which was dismissed with the observation that if the applicant was aggrieved by the respondents'

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letter dated 22.2.99, it would be open to him to challenge the same separately in accordance with the law. The fact that the respondents had withdrawn the aforesaid impugned letter of 10.9.98 and had, at a subsequent stage issued another letter dated 22.2.99, had weighed with the Tribunal which felt that the aforesaid letter dated 22.2.99 was self-contained and self-explanatory and, therefore, there could be no ground for initiating contempt action against the respondents. The applicant has filed the present OA accordingly impugning the aforesaid letter dated 22.2.99 as per the liberty given to him by the Tribunal.

6. Since the original case file pertaining to the aforesaid OA-1295/97 has been produced in the Court, I have found it worthwhile to glance through the pleadings of the applicant placed on record in that OA. I find that the applicant had, inter alia, placed on file (in that OA) a detailed letter explaining the relevant rules governing allotment of Govt. residences and had pointed out the manner in which the respondents had gone wrong in dealing with the subject matter of allotments. He had, in particular, pointed out that the respondents have wrongly and incorrectly fixed the DOP not only in respect of the applicant but in respect of all others and that if the relevant rules had been correctly interpreted and applied, no case could be made out in support of the eviction of the applicant nor for charging enhanced licence fee from him. He has asserted that, as a matter of fact, he would be found to be an in turn allottee for the type of house he was allotted and resided in and not

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an out of turn allottee to which the directions of the Supreme Court and the provisions made in the aforesaid Ordinance would apply.

7. Since it is important to do so for arriving at a proper conclusion in the present OA, I would like to recapitulate the relevant supplementary rules pertaining to the fixation of DOP and allotment of Govt. residences included in the general pool. First the DOP. The relevant SR is reproduced below:-

"(i) Priority Date - of an officer in relation to a type of residence to which he is eligible under the provisions of S.R. 317-B-5, means the earliest date from which he has been continuously drawing emoluments relevant to a particular type or a higher type in a past under the Central Government....".
(emphasis supplied by me)

8. The aforesaid S.R.317-B-5 provides as under:-

"Save as otherwise provides by these rules, an officer will be eligible for

allotment of a residence of the type shown in the table below:-

Type of residence	Category of Officer or his monthly emoluments as on such date as may be specified by the Central Government for the purpose of the Allotment year concerned.
I	Less than Rs.950.00
II	Less than Rs.1500.00 but not less than Rs.950.00
III	Less than Rs.2800.00 but not less than Rs.1500.00
IV	Less than Rs.3600.00 but not less than Rs.2800.00
V(A)	Less than Rs.4500.00 but not less than Rs.3600.00
V(B)	Less than Rs.5900.00 but not less than Rs.4500.00
VI(A)	Less than Rs.6700.00 but not less than Rs.5900.00
VI(B)	Rs.6700.00 and above.

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9. A combined reading of the aforesaid SRs would show that the applicant who was drawing pay between Rs.3600 and Rs.4500 as on 1.1.86 was entitled to the allotment of a Type V(A) residence and prima facie his DOP would be 1.1.1986. The definition of DOP, it would be seen, however, provides for the earliest date from which the applicant has been continuously drawing emoluments relevant to a particular type. Now prior to the coming into force of the 4th Central Pay Commission's recommendations, the requirement for the allotment of type V (A) residence was different. In those days, officers drawing a pay of Rs.1500 and above, were entitled for the allotment of type V (A) residence. The applicant was drawing a pay of Rs.1500 or more w.e.f. 1.3.83, i.e., from a date much before the 4th CPC's recommendations were enforced by the Govt. The position with regard to DOP for any specific type of residence would, therefore, appear to vary from one CPC to another. Thus it would be seen that theoretically speaking there could be several DOP in respect of the one and the same applicant. This is not the correct position. The DOP is the earliest of all such dates. In the present case, the applicant first became eligible for the allotment of type V (A) residence on 1.3.83 and, therefore, that would be the earliest date from which he should be deemed to be continuously drawing emoluments relevant to type V (A). In the circumstances, I find the applicant has correctly asserted that insofar as he is concerned, the DOP should be taken as 1.3.1983. I find that despite the rule position being abundantly clear, as aforesaid, the

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respondents have not succeeded in dealing with the applicant in a fair and just manner.

10. The respondents issued a notification on 15.10.93 inviting applications for the allotment of general pool residence etc. for the allotment period extending from 1.1.94 to 31.12.95. This was as stated by the applicant subsequently extended further in accordance with the judgement of the Supreme Court. I have carefully perused the said notification and find that the same lays down that for the allotment of type V (A) accommodation only those officers could make applications as were drawing not less than Rs.5000 PM as basic pay as on 1.10.93. By doing this, I find, the respondents have introduced an extraneous factor into the scheme of things. This is because in normal course and consistently with the relevant SRs all those officers could file applications for the allotment of type V (A) residence as were eligible to do so in accordance with their DOP. For instance, as has been seen, going by the definition of DOP, the applicant had become eligible for filing an application for the allotment of type V (A) accommodation way back on 1.3.83 which is the earliest date from which he has been drawing salary relevant for type V (A) residence. The respondents should, therefore, have permitted all officers to apply for the type V (A) accommodation as had become eligible to do so in accordance with their respective DOPs. Having allowed all the eligible officers as indicated, the respondents could always arrange their names in order of seniority and make allotments on that basis. The rules in fact go

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to the extent of providing that in a situation in which the DOPs of two or more officers happen to be the same, their inter-se-seniority should be determined by the emoluments, with an officer in receipt of higher emoluments taking precedence over the officer with lower emoluments. Further, where the emoluments were found to be equal, the respondents could go by the length of service and where both the emoluments and the length of service were found to be equal, the respondents could decide on the basis of the scale of pay, with the officer working in a post having higher scale of pay taking precedence over the officer working in a lower scale of pay. The rule position, therefore, is not only abundantly clear but is logical as well as fair. In the circumstances, the innovation introduced by the respondents by stipulating that only those officers could apply as had been drawing the basic pay of Rs.5000 or more as on 1.10.93, does not find any support in the relevant SRs. This is notwithstanding the fact that a similar practice has been followed by the respondents now over the years. There was, as stated, no need to fix another cut off date when the relevant SRs provide for treating DOPs as cut off dates for various types of residences. It was and is open to the respondents to amend the SRs suitably if they really wanted or even now want to abandon the concept of DOP or to dilute/modify the same so as to stipulate other cut-off date or dates (such as 1.10.1993 in the present case). For the present it is not as though the concept of priority (DOP) has been dispensed with altogether while issuing the aforesaid notification of 15.10.93. There is an indirect

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mention of the definition of DOP in the same notification in the form of a note. Not only this, the said notification also provides that the DOP would have to be filled in/indicated very clearly on the top of the form in the space available for the purpose in bold figures. One is left to wonder as to what the aforesaid provision could possibly mean. If those drawing basic pay of less than Rs.5000 as on 1.10.93, were to be ignored, as the respondents really intended to do, the concept of DOP and seniority based thereon, automatically lose all meaning. It is known that some services move on more rapidly than the others in matters of promotion and also in the matter of increases in basic pay and pay from year to year. Thus, it is possible for two officers with the same DOP to reach the basic pay of Rs.5000/- or any other cut off limit at different points of time. By laying down the aforesaid requirement of basic pay of Rs.5000 or more as on 10.93, the respondents have, I find, not only introduced a new dimension in contravention of the relevant SRs but have, wittingly or unwittingly sought to discriminate between two officers with the same DOP on the basis of a consideration not forming part of nor contemplated in the SRs.

11. In that same OA, being OA-1295/97, the applicant had placed on record a certificate which clearly shows that his basic pay was Rs.1500 PM from 1.3.83 and further that as on 1.1.86, his basic pay was fixed at Rs.3950/- PM. He has also placed on record (in that OA) a certificate showing the DOP for various types of residences for the period before the 4th CPC and also for the period thereafter.)

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12. The main grievance of the applicant in the present OA is that despite the clear direction (reproduced in para 4 above) given by this Tribunal while deciding the aforesaid previous OA, the respondents have not cared to decide his DOP in accordance with the submissions made by him in that OA and to do which he had duly represented on 21.8.97.

13. For the reasons mentioned in the preceding paragraphs and having regard particularly to the rule position, the impugned letter dated 22.2.99, I find, stands vitiated being based as it is on an incorrect understanding of the DOP as provided in the relevant supplementary rules. The same is accordingly quashed and set aside and the respondents are directed to assign 1.3.83 as his DOP and keeping this in mind to make an assessment of the amount of extra licence fee, if any, payable by the applicant. Further, based on the same consideration, the respondents should consider declaring him to be an in-turn allottee w.e.f. 17.11.94 being date of occupation or such other date from which it is found proper to do so according to the SRs and the judgement of the Supreme Court and the Ordinance.

14. The OA is disposed of in the aforestated terms without any order as to costs.

S.A.T. Rizvi

(S.A.T. Rizvi)
Member (A)

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