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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA 662/1999

New Delhi this the 20th day of January, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

1. G. Bernad
S/o Shri G. ~~Nagamma~~ Rajayya
R/o Q.No. 298, Sector-2,
R.K. Puram, New Delhi.

2. G. Nagamma
W/o Shri G. Rajayya,
R/o Q.No. 298, Sector-2,
R.K. Puram, New Delhi.

(By Advocate Sh.S.K. Gupta)

.....Applicants.

Versus

1. Union of India, through
Secretary,
Ministry of Urban Development,
Nirman Bhawan, DELHI.

2. Director,
Directorate of Estate,
Ministry of Urban Development,
Nirman Bhawan, Type-I Section,
New Delhi.

3. Estate Officer,
Directorate of Estate,
Nirman Bhawan,
New Delhi.

4. Office of Garrison Engineer (South)
Palam, Delhi Cantt.,
Delhi-110 010.

.....Respondents.

(By Advocate Sh. Rajinder Nischal)

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ORDER (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

In MA 2233/99, applicant 1 had sought a direction to the respondents to produce his service book to establish the fact that throughout the relevant period, in fact from his birth he has been living in the Government quarter No. 298, Sector-2, R.K. Puram, New Delhi. Shri Rajinder Nischal, learned counsel, submits that he does not dispute the fact about the residence of the applicant in this Government quarter. In the circumstances, the service book called for in the MA is not necessary and accordingly MA is disposed of.

2. The applicants are aggrieved by the order passed by the respondents dated 17.7.1998 cancelling the allotment of the aforesaid Quarter in the name of applicant 2 who has retired from service on 31.5.1998. Applicant 1 is a son of applicant 2, and claims that the Government quarter should be regularised in his name as he fulfils the laid down conditions as contained in the relevant rules and instructions issued by the respondents from time to time.

3. The respondents are not disputing the fact that after applicant 1 was appointed as Chowkidar on 27.9.1997 and even prior to that date, he had continued to reside in the aforesaid quarter with his mother. The only issue in this case is that from 8.10.1997 to 31.5.1998, the applicant had been paid House Rent Allowance (HRA) though he was sharing the Government quarter with his mother, that is applicant 2. According to Shri S.K. Gupta, learned counsel for the applicants, on realising that applicant 1 ought not to have

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accepted the HRA, he immediately took steps to refund the same on 28.5.1998, that is even before applicant 2 retired from service on 31.5.1998. In this case, one of the conditions laid down is that the ward of the Government servant who has retired should have resided with the Government servant at least three years or six months ^{as the case may be,} from the date of his joining service. In this case, there is no dispute that applicant 1 had in fact resided with applicant 2 for this required period of six months.

4. According to the respondents, they have stated that he has not resided with his mother as he had been drawing HRA w.e.f. 8.10.1997 which he later refunded. They have relied on the Ministry of Works, Directorates of Estates O.M. dated 29.8.1981. Shri Rajinder Nischal, learned counsel, has submitted that merely refunding the amount of HRA does not entitle the applicant to have the Government quarter regularised in his name as per the relevant O.M. dated 29.8.1981. He has, therefore, prayed that the O.A. may be dismissed and the applicants may be directed to vacate the premises which they are occupying unauthorisedly.

5. I have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

6. The relevant portion of the O.M. dated 29.8.1981 reads as follows:

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"The matter has been examined in this Ministry in consultation with the Financial Division. House Rent Allowance is drawn by an employee on production of a

certificate that he/she does not reside with his parents in Government accommodation. So the question of its refund does not arise.

7. Shri S.K. Gupta, learned counsel for the applicant, has very vehemently submitted that in terms of the aforesaid Paragraph 2 of the Office Memorandum, the applicant had ^{not} produced ^{is} any certificate that he does not live in the Government accommodation which had been allotted to his mother, that is Quarter No.298, Sector-2, R.K. Puram, New Delhi. In fact, he has drawn my attention to the letter dated 27.9.1997 showing this very same address of applicant 1, as well as copy of the ration card wherein his residence has been shown in the same quarter. He has, therefore, contended that nowhere the applicant has given a certificate that he does not live in the Government accommodation to entitle him for receipt of the HRA during the relevant period. I am unable to agree with this contention because applicant 1, as a Government servant would have been aware that he is living in the Government quarter and as such he ought not to have received the HRA. Apart from this, it is seen that applicant 1 submitted his applications to respondents for regularisation of the quarter in his name and he had refunded the HRA. However, it is noticed from the respondents' O.M. dated 29.8.1981 that this very question has been considered by the Government and a decision has been taken that the question of refund does not arise in such circumstances. As the applicant had admittedly received HRA from 8.10.1997 till 31.5.1998 he does not fulfil the laid down conditions for regularisation of the aforesaid Govt. quarter in his name. In the facts and circumstances of the case, the action of the respondents cannot be termed as illegal,

arbitrary or against the relevant rules and instructions justifying any interference in the matter.

8. In the result, for the reasons given above, O.A. fails and is dismissed. However, in the particular facts and circumstances of the case, the applicants ^{are} granted one month to hand over vacant possession of the quarter to the concerned officer of the respondents in compliance with this order, in accordance with the relevant rules and instructions. Parties to bear their own costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'