

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

MA 3838/94 and R.A. 391/94 in O.A. 1043/94

New Delhi this is the 25th January 1995.

Hon'ble Shri S.R. Adiga, Member(A)

(15)

P.C. Gupta,
S/o Sh. Asharfi Lal Gupta,
R/o Qr. No.102 Type III,
N.H. IV. Faridabad. Applicant.

Versus

1. Union of India, through
the Secretary, Ministry of
Urban Development, Nirman Bhawan,
New Delhi.

2. The Director,
Office of Directorate of Estates,
Nirman Bhawan,
New Delhi.

3. Assistant Estate Manager,
Office of the Asstt. Estate Manager,
N.H. IV, Faridabad.

4. The Director,
Intelligence Bureau(NHA),
North Block,
New Delhi Respondents.

IN ORDER
~~RECORDED~~ (BY CIRCULATION)

This is a Review Application bearing No.391/94 dated 16.11.94 filed by Shri P.C. Gupta, praying for review of judgment dated 30.9.94 in OA No.1043/94, P.C. Gupta vs. UOI & Ors. In this connection MA No.3838/94 has also been filed along with the RA praying for direction to Respondent No. 4 (Intelligence Bureau) to file their counter affidavit; keep the impugned judgment in abeyance till the disposal of the RA; direct continuance of the interim relief during the pendency of the RA and direct the RA/OA be heard by a Division Bench.

2. Shri P.C. Gupta C.I.O. Grade-I, Intelligence Bureau(NHA) New Delhi filed the OA in question ⁱⁿ seeking a declaration that he was entitled to retain the accommodation at Faridabad

which had been allotted to him on rent/licensee fee basis, even after he had been posted to Delhi. The UOI through the Secretary, Ministry of Urban Development was made respondent No.1. The Director of Estate, New Delhi and the Asstt. Estate Manager, Faridabad was made respondent No.2 and respondent No.3 respectively and the Director I.B.(MHA) was made respondent No.4. Notices were directed to be issued to the respondents to file their reply. Respondents 1 to 3 filed their counter reply through their counsel Shri M.K. Gupta vide Filing No.6008 dt.19.7.94. Despite service of notice and sufficient opportunities being given to respondent No.4 ~~not~~ not to file any reply, and also did not appear at any stage, either in person or through counsel. Accordingly applicants counsel Shri Bahera and counsel for respondents 1,2 and 3 Shri M.K. Gupta were heard at considerable length on 7.9.94, the available materials on record were carefully ~~perused~~, due ~~concern~~ consideration was given to the rival contentions, after which the impugned judgment was delivered, rejecting the prayer and dismissing the OA.

3. The grounds for dismissal, inter alia were:

- 1) The Home Ministry's circular dt.4.12.76 and 31.12.76 available on the ~~department~~ file of respondents 1 & 2 which compiled/consolidated the Govt. orders/instruction on the admissibility of pay & allowances to deputationist and non-deputationist officers respectively in I.B. purported to grant IB Officers below the rank of DCIO such as the applicant, the option of rent free unfurnished accommodation, or HRA in lieu thereof, as admissible to their confess but which read with Home Ministry, letter dt. 23.5.69 limited this benefit for the duration such officer retained Govt. Accommodation at the place/state of his posting.
- II) Subsequently the respondents 1 to 3 permitted Govt. servants who had been allotted for accommodation which posted in Ghaziabad/Faridabad to retain the accommodation there, even after they had been transferred to Delhi, but made it clear, vise their Circular dated 11.4.84, that this concession would be subject to payment of rent at normal rates, and upon a query

made by respondent No.4 in this regard as far back as 1985, were ~~explained~~ to unambiguously on 10.9.85 that the concession of rent free accommodation was admissible only at the place of their posting and not elsewhere. This issue had been raised by the IB or by their Officers independently more than once, and the Directorate of Estate had been ~~consistent~~ in their view that the facility of rent free accommodation in Faridabad would be available only as long as the officers were posted there, and this facility would not be available once the officer was no longer posted there.

III) As rightly urged by Shri Gupta the interpretation given by respondents 1 to 3 could not be said to be arbitrary, discriminatory, unreasonable, illegal or violation of Article 14 & 16 of the ~~constitution~~ⁱⁿ and had been ~~foree~~ since long and had been uniformly applicable in all other cases, and any ~~composition~~^{instruction} in the service rules or instruction which was in ~~contravene~~^{formal} with long standing practice had to be ~~prefer~~^{erred}, vide the ruling in S. Nathan Vs. UOI 1992 (19) ATC 928.

IV) The applicant had challenged what was essentially a policy decision of the respondents, it was settled by that Tribunals/Courts should not interfere with policy decisions, unless they were against the public interest, or were manifestly unreasonable.

4. The first ground taken in the RA is that there is an error apparent on the face of the record, in that as the applicant is entitled to rent free accommodation or HRA in lieu thereof, on the same rate and basis as available to his corresponding counterparts from ~~glate~~ CID/IB at his place of posting, ^{and} Faridabad, Ghaziabad and Delhi should have been taken as one station. In this connection Finance Ministry Circular No. 19030/3/80-E.IV dt. 1.8.89 is cited which states that as Faridabad Municipality is ⁱⁿ ~~in~~ close proximity to Delhi Municipality, journeys between Faridabad Municipality and Delhi Municipality should be treated as local journeys for the purpose of T.A. It is clear from this ground which has been urged that the applicant himself admits that the benefits of rent free accommodation

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would be available on the same rate and basis as available to his corresponding counterpart from ~~some~~ States (ID)/IB at his place of posting. Thus if he was posted in Faridabad he would enjoy the benefit at the same rate and basis as available to his corresponding counterpart from Haryana State CIO/IB, but if he was transferred to Delhi but chose to continue to retain the accommodation allotted to him while posted at Faridabad, the benefit would cease, and would resume only after ^{the} relinquished his accommodation in Faridabad and was allotted accommodation in Delhi. This benefit would not be admissible if he was posted at Delhi, but of his own choice continued to retain accommodation at Faridabad. Hence there is no error apparent on the face of the record, and the Finance Ministry's circular relied upon, which relates to T.A. ^{allowance} does not help the applicant.

5. The second ground taken is that the applicant who is entitled to rent free accommodation if he is posted at both places, ^{being in} Delhi or Faridabad is compared with an unequal, that is one who is not entitled to rent free accommodation either in Delhi or Faridabad, which is an error on the face of the record. This ground is wholly without merit, and no such comparison has been made. All that has been held is that in accordance with ^{existing} circulars and executive instruction the applicant is entitled to rent free accommodation in Faridabad for the duration he is posted at Faridabad, but is not entitled to this benefit, if after his transfer to Delhi he continues of his own choice to retain his accommodation in Faridabad.

6. The next ground taken is that an error apparent on the face of the record has been committed inasmuch as the applicant was allotted Govt. accommodation as an incidence of service under Respondent No.4 (IB) who did not file any counter affidavit, and all the averments of the applicant vis-a-vis respondent No.4 and to be taken as proved, not having been controverted on affidavit. As pointed out above respondent No.4 was issued notice to file reply,

(9) ^{being}

but inspite of service and several opportunities given, they neither filed reply nor appeared at any stage prior to or on the date of hearing. Accordingly after hearing applicants counsel and the counsel for respondents 1 to 3 who had filed reply, the judgment was delivered. Hence there is no error apparent on the face of the record.

7. The next ground taken is that S. Nathans case (Supra) was not mentioned by respondents counsel while arguing the matter and should not have been relied upon in the judgment. What Shri Gupta had stated during hearing was that it was well settled that any ^{instruction} in the service rules which was in consonance with long standing practice had to be preferred, and that he would give the relevant citation later which, he did. ^{legal} In any case this ^{preposition is so well settled,} that even without a citation it cannot be denied, and moreover this was not the only ground on which the application was dismissed. Hence this argument also fails.

8. The next ground taken is that the applicant was not given knowledge of the contents of the ^{Department} files of respondent No.2 (Directorate of Estates), referred to in the judgment. These files were taken on record during hearing in the presence of applicants counsel, but no ^{prayer for their personal} was made at that stage.

9. The last ground taken is that the applicants rejoinder ssid to have been filed, was not on record ^{when} the matter was heard, although the Tribunal had directed the Registry to have the same traced out and placed on record, as a result of which the Tribunal was deprived of the benefit/assistance of the rejoinder. What is essential is that the parties are given a full opportunity of being heard and that has been amply done in this case, as the applicants counsel was personally present and heard at considerable length on the date of

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hearing, and points taken in the rejoinder could well have been, and indeed were, urged during hearing. Hence this does not constitute an error apparent on the face of the record either.

10. Hence no good grounds has been made out to warrant review of the impugned judgment, within the scope and ambit of Order 47 Rule 1 CPC.

11. Under the circumstances, the prayer made in M.A. No.3838/94 to direct respondent No.4 (I.B) to file their counter affidavit at this stage, and to keep the impugned judgment in abeyance and to direct continuance of the interim relief, also does not arise. Furthermore the prayer made in that M.A. for directing the R.A./O.A. to be heard by a Division Bench also does not arise, as the R.A. has been correctly assigned to this Single Bench for disposal by circulation, in accordance with Rule 40 of CAT Rules of Practice, 1994, read with Paragraph II (a) of Appendix IV to those Rules.

12. For the reasons stated above, R.A.No.391/94 as well as M.A.No.3834/94 are rejected.

Arif Ali
(S.R.ADIGE)
MEMBER(A)