

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

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O.A./T.A. No. 307 of 1995
M.O. No. 1745 of 1995

Decided on: 7.2.96

Shri Bishram Singh And AnotherApplicant(s)

(By Shri K.E.S. & Rajan Advocate)

Versus

U.O.I. & OthersRespondent(s)


(By Shri M.M. Sudan Advocate)

CORAM:

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

THE HON'BLE SHRI

1. Whether to be referred to the Reporter or not?
2. Whether to be circulated to the other Benches of the Tribunal?


(K. MUTHUKUMAR)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 807 of 1995
M.A. No. 1745 of 1995

New Delhi this the 7th day of February, 1996

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

1. Shri Bishram Singh
R/o 836 Sector VI,
R.k. Puram,
New Delhi-110 022.
2. Shri Jaikrit Rawat
R/o 836 Sector VI,
R.K. Puram,
New Delhi-110 022. ...Applicants

By Advocate Shri K.B.S. Rajan

Versus

1. Union of India through
Secretary,
Department of Posts,
New Delhi.
2. Chief Post Master General
Delhi Circle,
Meghdoot Bhavan,
New Delhi.
3. The Senior Superintendent
Air Mail Sorting Division,
New Delhi-110 021. ..Respondents

By Advocate Shri M.M. Sudan

ORDER

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

This application is directed against the non-regularisation of the Government accommodation which was held by applicant No.1 in favour of his son, who is applicant No.2 consequent on the retirement of applicant No.1 and the applicant No.2 being treated at par with temporary Group 'D' employee after having been conferred temporary status with effect from 29.11.1989. The applicant No.2 contends that he was granted temporary status

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in accordance with the scheme drawn up by the respondents by their order dated 12.4.1991. He contends that he had drawn emoluments as per regular Government servant. Applicant No.2 contends that he had requested the respondents not to pay him any House Rent Allowances (hereinafter referred to as 'HRA') by his letter dated 10.9.1991 and subsequently in January, 1993, he had refunded the HRA drawn by him from 29.11.1989 to 31.8.1991 and had, therefore, not drawn any HRA right from the day, he became eligible to draw the same, i.e., from the date he was granted temporary status. The sole ground taken by the applicant No.2 is that since the HRA is in lieu of the Government accommodation to be provided to the Government servant and if the HRA is not drawn, the respondents are bound to provide him the Government accommodation. He avers that the sole criterion for allotment of Government accommodation is entitlement to HRA and the applicant was entitled to draw the HRA from 1989 onwards. He contends that just because his father had retired on 31.3.92 and he was conferred Group 'D' status from 29.11.1992 only, the respondents could not deny him out of turn allotment of Government accommodation. The respondents, however, have strongly contested this plea and have averred that the applicant was not a regular Government employee and, therefore, was not eligible for Government accommodation on the retirement of his father, i.e., applicant No.1. They have also submitted that the applicant was granted temporary status with effect from 29.11.1989 and had drawn an amount of Rs.2788/- for the period from 29.11.89 to 31.8.91 and after keeping this amount for a sufficient period, had refunded the

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same in January, 1993 so that he could claim that he had not drawn HRA so as to make him eligible for consideration of allotment of Government accommodation.

2. The learned counsel for the applicant strenuously argued that the fact that HRA was given to Government employees only in lieu of Government accommodation and once no HRA is paid, the Government servant would be entitled to Government accommodation as the payment of HRA was clearly in lieu of the government accommodation. He argued that the status of the Government employee whether he is temporary or confirmed, is of no consequence. So long as the Government servant is entitled to HRA and in the absence of payment of HRA, the Government is bound to provide him Government accommodation. The learned counsel strongly relied on the decision in Director, Central Plantation Crops Research Institute, Kesaragod and Others Vs. M. Purushothaman and Others, 1994 Supp.(3) Supreme Court Cases(SCC) 282 in which it was observed that HRA is in lieu of the accommodation made available to the employee and it, therefore, followed that whenever the accommodation was offered, the employee had to accept it or had to forfeit the HRA and that HRA was a compensatory allowance in lieu of the accommodation. The learned counsel, therefore, argued that drawl or non-drawl of HRA will be the sole criterion for allotment of Government accommodation and as the applicant was eligible for HRA from 1989 onwards, he was eligible for Government accommodation on that day. The learned

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counsel for the respondents argued that in terms of the scheme drawn up by the respondents, the grant of temporary status of casual labourers does not automatically imply that they would be appointed as regularly Group 'D' employee and the conferment of temporary status had no relation to the availability of sanctioned Group 'D' posts. Besides, he contends that the applicant No.2 did not fulfil the conditions for the allotment of quarter as he was not a regular Group 'D' employee. It was only in November, 1992 when he completed 3 years of service with a temporary status, he had been treated at par with temporary Group 'D' employee and, therefore, on the date when his father retired, the applicant was only a casual labourer with temporary status and had no claim for allotment of Government accommodation, much less, out of turn allotment. He cites the decision in Usha Devi Vs. General Manager, Southern Railways, Madras and Others, (1987) 5 Administrative Tribunals Cases 512 to buttress this contention that casual labourer though acquired temporary status cannot be considered a regular employee. The learned counsel for the respondents also submits that casual labourer with temporary status does not hold a civil post and, therefore, cannot be treated as a Government servant for being eligible for Government accommodation. It is only in November, 1992 that the applicant No.2 was treated on par with temporary Group 'D' employee and, therefore, if at all, his eligibility for Government accommodation would start from that date.

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3. I have given careful consideration to the averments made by the parties and the arguments of the learned counsel.

4. Admittedly, the applicant was granted temporary status in terms of the scheme drawn up by the respondents by their letter dated 12.4.1991. A careful reading of this scheme makes it abundantly clear that the conferment of temporary status does not carry with it the automatic status of a regular Group 'D' employee. It has been made clear in the aforesaid scheme that after rendering 3 years of continuous service after conferment of temporary status, the casual labourers would be treated at par with temporary Group 'D' employees for certain specific purposes, as provided therein. Subsequently by their order dated 30.11.1992 the respondents have made this position clear by stating that the casual labourers who have been conferred with temporary status will be treated at par with temporary Group 'D' employees with effect from the date, they completed 3 years service in the newly acquired temporary status and will be entitled to the benefits admissible to them. In the aforesaid circular dated 30.11.92, the benefits admissible to them have been explained with the words "such as" and certain items are listed as the benefits. Even granting that the benefits which are listed there are only illustrative and not-exhaustive and the very fact that they are treated at par with the temporary employee would construe to mean that they are regularly Group 'D' employees, the eligibility of applicant No.2 for consideration for Government accommodation would at best be from the date when he is treated at par with regularly Group 'D' employee

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subject to his being found otherwise eligible for regular appointment as Group 'D' under the rules applicable to such recruitment.

5. The contention of the learned counsel for the applicant that the sole criterion for allotment of government accommodation would be the entitlement to HRA is not tenable. While an eligible government servant may become entitled to HRA in the absence of provision of Government accommodation to which he is eligible, the converse is not always true. Simply because the applicant is allowed HRA it does not automatically follow that he would be eligible for Government accommodation. The eligibility for Government accommodation is determined by separate set of rules framed by the Government in this behalf. In the case of casual labourer with temporary status, they are entitled for payment at daily rates on the basis of minimum of the pay scale for a regular Group 'D' employee including DA, HRA and CCA and, therefore, HRA and CCA are taken into account for determining the daily rate. The learned counsel for the applicant argued that HRA has been given as a separate component in the monthly pay bill of the applicant. Merely because the casual labourers with temporary status are paid on a daily rated basis although every month for the sake of convenience of disbursement by means of a bill indicating the components the payment constitutes his wage for a month on daily rate. The scheme contemplates payment at daily rates calculated on the basis of the minimum of the pay scale including DA, HRA and CCA applicable on the minimum and,

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therefore, the contention of the learned counsel for the applicant that he was granted HRA and, therefore, would be entitled to Government accommodation is not acceptable.

6. In the result, the application fails and is rejected. There will be no order as to costs.



(K. MUTHUKUMAR)
MEMBER (A)

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