

CAT

29

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI**

O.A. No. 1677/96
T.A. No.

199

DATE OF DECISION 7.1.98

Charles Teppo

Petitioner

Sh. M.P. Raju

Advocate for the Petitioner(s)

Versus

UOI M/O Urban Development

Respondent

Sh. K.C. Mittal, learned counsel
through proxy counsel Sh. Harvir
Singh.

Advocate for the Respondent

CORAM

The Hon'ble Shri S.R. Adige, Vice Chairman(A)

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

1. To be referred to the Reporter or not? *yes*

2. Whether it needs to be circulated to other Benches of the Tribunal? *yes*

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

Central Administrative Tribunal
Principal Bench

O.A. 1677/96

New Delhi this the 7 th day of January, 1998.

Hon'ble Shri S.R. Adige, Vice Chairman (A).
Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Shri Charles Toppo,
through his authorised
representative and power of
Attorney Holder,
Shri Anthonis Toppo,
H-141, Nanakpura,
New Delhi. ... Applicant.

By Advocate Dr. M.P. Raju.

Versus

1. Union of India through
its Secretary,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi.
2. Estate Officer,
Directorate of Estates,
Nirman Bhawan,
New Delhi.
3. The Secretary,
Ministry of External Affairs,
South Block,
New Delhi.
4. Mr. P.M. Misra,
Estate Officer,
Directorate of Estates,
Nirman Bhawan,
New Delhi. ... Respondents.

By Advocate Shri Harvir Singh, proxy for Mrs. P.K. Gupta.

O R D E R

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

The applicant is aggrieved by the order of
eviction dated 26.7.1996 passed by Respondent 2 to
vacate the Qr. No. H-141, Nanakpura, New Delhi, on the
ground that this is contrary to the order of the
Tribunal dated 18.5.1993 in O.A. 1178/90. This
application had been earlier heard by the Single Bench

13/

31

and by order dated 29.5.1997, it had been ordered that the same may be placed before the Chairman for referring it to a larger Bench as the conclusions arrived at in that order were different from the view taken in O.A. 1178/90. Accordingly, by the Chairman's order dated 7.6.1996 read with the order dated 29.7.1997, the case has been placed before the Division Bench.

2. The applicant has ~~also~~^{also} filed RA 164/97 for review of the judgement and order passed by the Single Bench dated 29.5.1997. MA 2649/97 in RA 164/97 has also been filed in which a prayer has been made that a direction may be given that the RA may be heard and decided before the hearing in the O.A. or on the reference, and that the whole O.A. may be heard on facts and law without limiting it to the question referred to the larger Bench.

3. Dr. M.P. Raju, learned counsel for the applicant, has raised certain preliminary questions of jurisdiction and maintainability of the reference. He submits that this case should be heard by a Full Bench and not by a Division Bench of the Tribunal. He submits that under Section 5(4)(d) of the Administrative Tribunals Act, 1985 (hereinafter referred to as 'the Act'), the Chairman may refer any case to be decided by a Bench composed of more than two Members by issuing general and special orders as he deems fit. Section 5(6) empowers the Chairman or any Member authorised by the Chairman in this behalf to function as a Single Bench in respect of such classes of cases or such

18

32

may
matters as the Chairman/by general or special orders specify.
The proviso to this sub-section (6) further provides that
if at any stage of the hearing of any such case or matter
it appears to the Chairman or such Member that the case
or matter is of such a nature that it ought to be heard
by a Bench consisting of two Members, the same may be
transferred by the Chairman or, as the case may be, referred
to him for transfer to such Bench as the Chairman may deem
fit. Under Section 22 of the ACT, CAT (Rules of Practice),
1993 have been framed. Appendix-I to Rule 18(c) of the
Rules of Practice, issued by the Chairman under Section
5(6) of the Act provides, inter alia, that if at any stage
of the proceedings it appears to the Single Member that
the case is of such a nature that it ought to be heard
by a Bench of two Members, he may refer it to the Chairman
to transfer it to a Bench of two Members. The learned
counsel relies on a Full Bench judgement of the Tribunal
in **Amia Kumar Chatteraj & Ors. Vs. Union of India & Ors.**
(1989-91 Full Bench Judgements, Bahri Brothers (Vol.II)
473) where the reference from a Single Member had been
made to a Full Bench of three Members. In this case, the
cases had been referred to the larger Bench in pursuance
of an order made by the Chairman on a reference made by
the Hon'ble Judicial Member (Calcutta Bench) dated 14.2.1990.
The learned counsel for the applicant, therefore, submits
that in the present case also, the reference ought to have
been made from a Single Bench of Hon'ble Member (A) to
a larger Bench of three Members, and not to a Division
Bench. However, we note that in **Amia Kumar Chatteraj's**
case (supra), the learned Judicial Member had noted
that there existed differing decisions of
the Hon'ble Supreme Court and the Lucknow

19

33

Bench of the Allahabad High Court, Jabalpur High Court and Allahabad Bench of the Tribunal and in order to avoid conflicting judgements, the matter had been referred to the Chairman for constituting the larger Bench which in that case was referred to a three Member Bench. On the other hand, in the present case the difference of opinion of the Hon'ble Single Member is only with that of the judgement/order of another Single Member in O.A. 1178/90. Therefore, in the facts of the case, the judgement in Amia Kumar Chatteraj's case (supra) would not appear to be relevant.

4. It was also argued by the learned counsel for the applicant that the learned Single Member in his order dated 29.5.1997 had concluded the proceedings and, therefore, it was not a case where the reference has been made under Explanation (3) to Appendix-I of Rule 18(c) of the CAT (Rules of Practice), 1993. We are also not able to agree with this contention. The Hon'ble Member in his order dated 29.5.1997 has stated that his conclusion differs from the decision given by the other Hon'ble Single Member in O.A. 1178/90, and has placed the matter before the Chairman for referring it to an appropriate Bench for a final decision on the question whether the denial of the facility of retention of General Pool accommodation to Group C officials of Ministry of External Affairs on their posting abroad amounts to discrimination and is ultra vires Articles 14 and 16 of the Constitution. The interim order issued on 6.8.1996 restraining the respondents from evicting the applicant's family from the quarter was ordered to be continued. We are of the view that this shows that the

89

34

proceedings have not been concluded. Explanation 3 of Appendix I of the CAJ (Rules of Practice), 1993 is a non obstante clause empowering the Single Member, at any stage of the proceedings, if he thinks that the case is of such a nature that it ought to be heard by a Bench of two Members, to refer the matter to the Chairman requesting him to transfer the matter to a Division Bench for hearing and decision. We, therefore, find that in the facts of the case and the aforesaid provisions of the ^{Act and R.} Rules, the reference made to the Division Bench is in order and there is no infirmity in not referring the case to the Full Bench.

5. On the merits of the case, we have carefully considered the judgements passed by the Hon'ble Single Members in O.A. 1178/90 and in O.A. 1677/96. In the present O.A., the applicant alleges that on his posting again out of India to Santiago, Chile in December, 1994, the respondents have once again issued the impugned order of eviction and he seeks a direction to quash the alleged cancellation order dated 29.1.1996 and to restrain the respondents permanently from evicting the applicant and his family from the Qr. No. H-141, Nanakpura, New Delhi. The respondents in their reply have submitted that since the applicant did not vacate the quarter in question under the Allotment Rules, the same was cancelled w.e.f. 9.4.1995 after giving him the four months period of retention from the date of his transfer. They have denied that they have not complied with the directions of the Tribunal in O.A. 1178/90. The applicant has also alleged that unlike in the case of death, in the case of retirement of a Government servant

28

25

the effect of regularisation of the Quarter in favour of the son or a daughter is necessary for peaceful life after the retirement of the Government servant and it is for this purpose that the obligation for regularisation of the quarter is there on the respondents towards the retired person and his dependents. Dr. M.P. Raju, learned counsel for the applicant, has also urged that in the light of the judgement of the Tribunal dated 18.5.1993 the applicant had every reasonable expectation that during his second posting outside India which is the subject matter of this O.A., he and his family will be entitled to continue in the same quarter on the same terms and conditions as ordered by the Tribunal previously and for regularisation of that quarter in his name. He has also submitted that there was no order of cancellation of the quarter and if it existed before the impugned eviction, the same was not communicated to him, and the same is violative of the principles of natural justice.

6. The other main argument advanced by the learned counsel for the applicant is on the question of discrimination. The learned counsel has alleged that the right to retain the General Pool accommodation to Group 'C' officials of the Ministry of External Affairs should be given because Group 'A' and 'D' officials of the same Ministry have been allowed to do so which has already been upheld by the Tribunal in the earlier judgement dated 18.5.1993. As it was concluded by the Tribunal that this was otherwise discriminatory and violative of the Articles 14 and 16 of the Constitution, it has, therefore, been urged that on the same ground

82

36

the respondents cannot cancel the allotment of the quarter or evict the applicant by the impugned eviction order. The learned counsel has also taken us in detail through the history of the case showing the similarity of the situation which existed at the time of his posting in London which was the subject matter of the cancellation order impugned in O.A. 1178/90 and the situation in the present O.A. when he was posted abroad for the second time and he had left his family behind in the same house.

7. We have carefully considered the pleadings, submissions made by the learned counsel for the parties and the judgements of the Tribunal dated 18.5.1993 and 29.5.1997. The respondents have submitted that although they have implemented the judgement of the Tribunal in O.A. 1178/90 dated 18.5.1993, that judgement cannot be followed to perpetuate a wrong order on the ground of equity. They rely on M/s Faridabad Ct. Scan Centre Vs. D.G. Health Services & Ors. (JT 1997 (3) SC 171).

8. The main ground taken by the applicant which has been accepted by the Tribunal in the order dated 18.5.1993 is the ground of discrimination. However, we respectfully agree with the reasoning given by Hon'ble Shri R.K. Ahooja, Member(A) in his order dated 29.5.1997 that there is a reasonable classification by which Group 'A', 'B' and 'C' officers/staff of the Ministry of External Affairs have been excluded and Group 'D' category have been allowed to retain the accommodation in General Pool. The rules applicable to the General Pool accommodation would be applicable to.

18/

37

the applicant when he accepts this type of accommodation on his transfer or posting abroad and he cannot claim ^{the} right to retain the quarter contrary to these Rules. The respondents have also clarified that in so far as the General Pool accommodation is concerned, there is no instruction for providing hostel accommodation to persons on being posted abroad as in the case of the applicant. We, therefore, hold that there has been no discrimination as far as the applicant is concerned in not allowing him to retain the General Pool accommodation allotted to him on his transfer abroad, solely on the ground that the same facility had been extended to Group D employees who have been allowed that facility, considering the low pay scales and other difficulties. We also agree, for the reasons given in the order dated 29.5.1997, that there is no basis for the argument that as a matter of welfare measure the house allotted to retiring Government servant should be allowed to be retained by him or that it should be regularised in the name of his ward for his life time. Such a contention cannot be accepted de hors the rules and the applicant cannot claim that he should be allowed retention of the quarter even on his transfer without cancellation of the allotment as per the rules. Any other conclusion, in the circumstances of the case, would mean that a Government servant who is transferred from one place to ^{another} whether in India or abroad, will be entitled to retain the Government accommodation in his original place of posting as well as receive HRA and TTA as the case may be in the other place where he is posted, which is obviously not covered by the existing rules. In this view of the matter, the judgement of the

88

38

Tribunal in O.A. 1178/90 cannot be considered to be good law and it is over-ruled (See M/s Faridabad Ct. Scan Centre Vs. D.G. Health Services & Ors. (supra). 1)

9. However, in the facts and circumstances of the case, since the parties before the Tribunal in O.A. 1178/90 and O.A. 1677/96 are the same, the plea of the applicant that he had proceeded on his second posting to Santiago, Chile leaving his family in Qr. No. H-141, Nanakpura expecting that the law as was laid down by the Tribunal in the earlier order, particularly regarding payment of normal licence fee, would also apply to the present case, cannot be totally ignored or rejected. The respondents have admitted that the Tribunal's order dated 18.5.1993 has been implemented and no appeal had been filed. During the hearing Shri M.P. Raju, learned counsel, has submitted that the applicant was expected back in New Delhi from his posting at Santiago, Chile by December 1997 on expiry of his term there. The Tribunal by order dated 9.8.1996 had restrained the respondents from evicting the applicant's family from the Quarter which has been extended till date by the order dated 29.5.1997.

10. In the facts and circumstances of the case, the O.A. is disposed of with the following directions:

(a) The respondents shall be entitled to recover normal licence fee from the applicant for his family's occupation of the

15

39


Quarter H-141, Nanakpura, New Delhi during the intervening period i.e. from the date of his posting to Santiago in December, 1994 till his return to India at the end of his normal tenure of posting in December, 1997 plus other charges in accordance with the Rules; thereafter licence fee/as prescribed **and charges shall be** in the Rules.

(b) In the particular facts of the case, we deem it proper that the impugned cancellation order dated 29.1.1996 and eviction order dated 26.7.1996 shall be stayed till 16.2.1998, and thereafter the respondents may take such action as they deem fit in accordance with law.

(c) We also make it clear that the applicant's claim for regularisation of the said Quarter in his name shall be considered in accordance with the relevant rules.

(d) In view of the fact that the O.A. has been reheard both on facts and law, as above, RA 164/97 to review the Single Bench order dated 29.5.1997 does not survive.

No order as to costs.


(Smt. Lakshmi Swaminathan)
Member (J)


(S.R. Adige)
Vice Chairman (A)

SRD